

G.W.F. Hegel

Edited by
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Thought

G.W.F. Hegel

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Series Preface

The International Library of Essays in the History of Social and Political Thought brings together collections of important essays dealing with the work of major figures in the history of social and political thought. The aim is to make accessible the complete text with the original pagination of those essays that should be read by all scholars working in that field. In each case, the selection is made from the extensive available literature by an established expert who has a keen sense of the continuing relevance of the history of social and political thought for contemporary theory and practice. The selection is made on the basis of the quality and enduring significance of the essays in question. Every volume has an introduction that places the selection made in the context of the wider literature, the historical period, the contemporary state of scholarship and the editor's particular interests.

TOM CAMPBELL

Series Editor

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Introduction

Georg Wilhelm Friedrich Hegel (1770–1831)

Life and Work

Georg Wilhelm Friedrich Hegel is amongst the greatest and most influential of political philosophers. It is a mark of the significance and impact of his thought, as well as of its complexity and ambivalence, that philosophers of both the Left (most famously Karl Marx and, in the 20th century, the Frankfurt School) and the Right (in a fashion, Max Stirner, and a century later, Michael Oakeshott and Carl Schmitt) are deeply indebted to Hegel as source or target, often both at once. And many have also identified strong liberal elements in his work.

Hegel was born in Stuttgart in 1770. His father was a civil servant at the court of the Duchy of Württemberg. In 1788 he entered the Tübinger Stift, a Protestant Seminary, where he became a close friend of two outstanding fellow students, Friedrich Hölderlin (the poet) and Friedrich Schelling (the philosopher). His interest in politics and current affairs developed along with their common enthusiasm for the revolutionary events in France. After periods as a private tutor, in 1801 he followed Schelling to the University of Jena, working as a virtually unpaid tutorial assistant until 1807. Following long spells as a newspaper editor in Bamberg and as a headmaster at the Gymnasium in Nuremberg, he took up his first fully professional university post as professor in Heidelberg in 1816 at the age of 46. In 1818 he moved to take up the Philosophy chair in Berlin, Prussia, previously occupied by Fichte. He was to remain in the post until his death in 1831.¹

As a philosopher Hegel is best known for his grandiloquent metaphysical system of absolute idealism.² But his work in social and political philosophy is more than just a supplement to this last great effort in philosophical system-building. He thought hard about – and wrote about – ethics in its broadest sense throughout his intellectual career. His early theological works were driven by a concern for social improvement and for finding a place for religion as a vehicle of cultural reform. In Jena he finished an earlier essay on the German Constitution and published his critical (1802–3) essay on Natural Law (*On the Scientific Ways of Treating Natural Law, Its Place in Practical Philosophy, and Its Relation to the Positive Sciences of Law*) in which he introduces criticisms of ‘individualist’ systems of normative ethics, notably Kantian ethics and social contract theories of the state. In his (unpublished) ‘System of Ethical Life’, and in lecture materials, the ‘Jena System Drafts’, he began to develop related concepts of spirit, mutual recognition and freedom which he would elaborate in the magnificent

1 For full details of Hegel’s life, read Terry Pinkard’s biography, *Hegel* (2000).

2 The best modern exposition of this system is Charles Taylor, *Hegel* (1975). Two modern works which serve as excellent introductions to Hegel’s philosophy are Stephen Houlgate, *Freedom, Truth and History: An Introduction to Hegel’s Philosophy* (1991) and Frederick Beiser, *Hegel* (2005).

(1807) *Phenomenology of Spirit* (henceforth *Phenomenology*).³ Hegel's ethics and political philosophy are sketched in the 'Objective Mind' section of the (1817) *Encyclopaedia of the Philosophical Sciences* and then in much greater detail in successive drafts of the *Elements of the Philosophy of Right* (henceforth *PR*)⁴, his fullest and most carefully articulated text on political theory, first published in 1821 as a handbook to accompany lectures. Additional material on social and political philosophy can be found in the *Lectures on the Philosophy of World History*, the *Lectures on the History of Philosophy* (both published after his death) and various essays, notably his 1831 essay 'On the English Reform Bill'.

Hegel's Idealism

In Hegel's system the study of social and political philosophy is the study of 'objective mind'. Hegel is an absolute idealist, which is to say, at its simplest, that the world is ultimately constituted by reason. This is an exotic metaphysical thesis, but it is not unprecedented and it is not absurd. Like all deep philosophical theses, absolute idealism is grounded in strong intuitions and good questions: If the universe is not, at bottom, mathematical, how can the equations of the physicist disclose its nature? Were the natural world not itself rational or intrinsically intelligible, how could rational creatures have knowledge of it? Absolute idealism can only be dismissed, if it can be dismissed, by careful philosophical arguments – not by guffaws or by kicking stones in the fashion of Samuel Johnson's dismissal of Berkeley's idealism. These things said, there are not many absolute idealists nowadays.

Idealism in social philosophy (of the kind that Marx aimed to turn 'on its head' as stated in the 1872 Preface to *Capital*) is an altogether more robust thesis. It claims that social institutions such as families, firms, trades unions, legal systems, states and their governments, are structures of mind (or Spirit – *Geist* is Hegel's term). The social world is a system of Objective Mind (as against Subjective Mind, exemplified in the mental life of individuals), constituted by such mental entities as intentions, expectations, decisions, beliefs, values, rules, conventions and laws. In this collection, Hegel's social idealism is broached in many essays (but notably those by Terry Pinkard (Chapter 2), Robert B. Pippin (Chapter 3) and Stephen Houlgate (Chapter 5)). Houlgate, in particular, explains Hegel's thesis of the unity of theoretical and practical spirit – thought and will – in the account that Hegel gives of his foundational value of freedom. This serves not only to link Hegel's metaphysics and epistemology to his social philosophy but also to explain the structure of the *Philosophy of Right* as an outline of how the free will is embodied in the institutional structures of the modern rational state, as Hegel interprets it.

Spirit, Reason and Freedom

Objective Mind (henceforth Spirit) has a history with a distinctive theme – indeed, for Hegel, nothing else has a history: Reason works in history to develop patterns of rationality in the

3 Cited at paragraph (§) numbers as given in the Miller translation: G.W.H. Hegel, *Hegel's Phenomenology of Spirit* trans. A.V. Miller (1977).

4 Cited at section (§) numbers from G.W.F. Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood, trans. H.B. Nisbet, (1991).

social world. Think of the history of Spirit as a mental space-time worm – ‘Spirit emptied out into Time’ (*Phenomenology* ¶808) – moving from civilization to civilization, beginning in the ancient Chinese world and moving to the German (Northern European Protestant) world of Hegel’s day via spells in India, Persia, Egypt, Greece, Rome and the Europe of mediaeval Christianity, and undergoing sequential changes in the process, all driven by the motor of reason. ‘This Becoming presents a slow-moving succession of Spirits, a gallery of images, each of which, endowed with all the riches of Spirit, moves thus slowly just because the Spirit has to penetrate and digest this entire wealth of its substance’ (*Phenomenology* ¶808). Thus social worlds which are irrational, say, because the citizens are faced with tragic conflicts between the norms of family life as dictated by religious beliefs and the laws of the state as commanded by the sovereign – this is the ancient world of Antigone as famously described in Chapter VI of the *Phenomenology* – must collapse and go under. Each such distinctively ‘ethical shape of Spirit has vanished and another takes its place’ (*Phenomenology* ¶475) – up to the end of history, the present day in which Hegel was writing.⁵

The modern social world exemplified in the Prussia which Hegel describes in the *Philosophy of Right* is the product and culmination of reason at work in history, the historical dialectic which is sketched in the *Phenomenology* and described in detail in the *Lectures on the Philosophy of World History*. As Hegel puts it in the celebrated ‘*Doppelsatz*’ (double-saying) of the Preface to *PR*:

What is rational is actual;

And what is actual is rational.

The essence of this hard saying is the claim that the modern social world that Hegel describes in *PR* is rational, a structure of reason to be disclosed by the rational powers of the enquiring philosopher. This claim has been the cause of massive controversy from the time it was first published. On one reading, encouraged in modern times by Karl Popper in *The Open Society and its Enemies* (1945), it is the scandalous slogan of a timid and complacent conservatism, endorsing as necessarily rational the real social world of his contemporary Prussia – and thereby pleasing the censors and the government funders of his university chair. Most modern readers reject this uncompromising view, noticing that Hegel distinguishes the ‘real’ from the ‘actual’ by identifying the actual as those elements of the real world which are distinctively rational. On this interpretation, the *Doppelsatz* risks becoming unexceptionable but trivial – indeed a tautology – but sensitive critics argue that the relation between actuality and rationality which Hegel celebrates leaves sufficient conceptual space for the sort of social criticism and practical amelioration that can reconcile otherwise alienated citizens to their social world. The most fully developed argument to this effect is mounted in Michael Hardimon’s (1994) monograph *Hegel’s Social Philosophy: The Project of Reconciliation*. Hardimon’s 1992 essay, ‘The Project of Reconciliation’ (Chapter 4) is included in this volume.

On a third reading of the *Doppelsatz*, Robert Stern (Chapter 1) argues that it is neither mindlessly conservative nor a content-less tautology nor yet the herald of social improvement through immanent critique. It is rather the expression of a commitment to reason, to rationalism as the proper method of comprehending the social world. It expresses a substantial claim about method in ethics which needs careful evaluation. In the essay by Benjamin R. Barber

5 For an excellent recent introduction to Hegel’s *Phenomenology*, see R. Stern, *Hegel and the Phenomenology of Spirit* (2002).

(Chapter 16) it is argued, by careful use of the example of Hegel's views on the role of women in the social world, that Hegel's method involves a tension between the claims of history and rationality which cannot be resolved if institutions are demonstrated to be imperfect.

Actual social freedom is the condition of social life wherein citizens live freely together and understand how the institutions that bind them secure this freedom. This latter understanding, Hegel believes, is charted most fully in the *Philosophy of Right* but it has its origins in Hegel's earlier writings, as we shall see.

Recognition in the *Phenomenology of Spirit*

Mention of freedom of the will and a common-sense grasp of social freedom as negative freedom, the condition of individual agents who are not prevented by laws or other social conditions from getting what they want, may lead us to think of freedom as an individual possession, a state which is enjoyed by individual persons. For Hegel, on the other hand, freedom is as much a social achievement as a property of individuals. There could not be a stable, persisting, social world in which one, or some, were free whilst others were not, in which one, or some, are masters and all others are slaves. History has shown us that societies which are organized in this fashion must change or perish, but in the *Phenomenology* where Hegel first publishes the account of Spirit that he has developed, he gives us a deeper argument to explain why this must be so.

Knowledge, he concludes at the end of the first chapter, cannot be a matter of a subject's acquaintance with, or perceiving, or theorising, a world of independent objects. Consciousness, he argues, requires self-consciousness or self-understanding, and he asks in the second ('Self-consciousness') chapter: what do we understand ourselves to be? First, we take ourselves to be living, desiring, creatures but this first and most primitive conception of ourselves is incomplete and unstable, itself consumed, he tells us, in the consummation of desire for objects of consumption. We can demonstrate to ourselves that we are not just desiring creatures by distancing ourselves from the pressing urgencies of the living, desiring, self, that is, by risking our lives in challenging others to a life and death struggle (*Phenomenology* ¶¶185–8). This strange kind of self-knowledge discloses to the protagonists that they are free in the sense that they can cast off natural urges and instincts. Both are willing to give up their lives, after all. Moreover there is a strong dialectical advance in that both parties to the struggle present themselves to the other as free agents. But this, too, is partial knowledge, of its nature incomplete – brief and passing for the protagonist who does not survive, transient for the winner of the fight, the sad survivor who no longer has an opponent who can recognize him as free. So a further dialectical advance is made into the Master–Slave dialectic, when the outcome of the struggle is not death, but enslavement for the loser who clings to life. The master achieves recognition of his mastery and liberation from the need to work to satisfy his desires; the slave secures his continued existence as a living creature who exists to serve his master.

Next, in a dialectical *bouleversement* that has proved enormously influential, Hegel demonstrates that the project of mastery is a failure and that the true advance in self-consciousness and liberation is taken by the slave. Echoing and amplifying some famous (but

unacknowledged) remarks of Rousseau in the *Second Discourse on the Origins of Inequality*,⁶ Hegel demonstrates that in becoming dependent on the work of the slave to satisfy his desires, and in seeking recognition from an inferior being whom he dominates, the master loses his freedom and fails to secure genuine recognition. Contrariwise, through the self-discipline exerted in the processes of skilled and thoughtful labour, together with the identification and recognition of his intelligent self in the products of his labour, the slave acquires a glimmering of freedom as self-knowledge that is denied to the master. The lessons of the master-slave dialectic are that one-sided recognition fails as a strategy for developing self-consciousness; that the creation of dependents cannot secure true independence; and, crucially, that personal freedom necessitates relationships of equality between persons who are free.

The insights developed through this bizarre sequence of emblematic figures have been an inspiration and resource for theorists of liberation and social equality ever since: for philosophers and ideologists supporting workers in their struggle against oppressive capitalist owners of the means of production, for the leaders of colonized peoples seeking independence from imperialist domination, and for feminists striving for the equality of women against the hegemony of men. Wage slavery, colonialist exploitation, the subjection of women – all such strategies of domination and subordination – are bound to fail, or so it is claimed, on the basis of Hegel's master-slave dialectic. True independence is the mutual interdependence of the "I" that is "We" and "We" that is "I" (*Phenomenology* ¶177), true recognition is mutual recognition wherein the parties 'recognize themselves as mutually recognizing one another' (*Phenomenology*, ¶184), true freedom is equal liberation for all.

These appropriations of Hegel's ideas should not blind us to the fact that Hegel himself was an enthusiastic supporter of burgeoning nineteenth-century capitalism, that he believed that colonialism was an important strategy in the elimination of poverty in the industrialized world, and that the proper place for women is the home. Steven B. Smith's essay, 'Hegel on Slavery and Domination' (Chapter 6) takes up many of these themes.

To what extent the egalitarian implications of the account of recognition given in the *Phenomenology* are developed or compromised in Hegel's later work has been a very controversial issue. Robert B. Pippin in 'What is the Question for which Hegel's Theory of Recognition is the Answer?' (Chapter 7) tackles this question directly. Pippin explores the point of Hegel's doctrine of recognition in the context of a great deal of recent interpretative work on Hegel's theory of recognition together with a modern resurgence of the claims of recognition in social philosophy.⁷ Pippin's essay emphasizes (what many have challenged) the strong connection between the Jena-period work on recognition and the *PR* treatment of freedom as the core value of the rational state. Modern ethical life (*Sittlichkeit*), the social embodiment of freedom, just is a condition of mutual recognition and interdependence, Pippin argues. To evaluate this claim we need to study the detail of the *Philosophy of Right* with very great care.

6 'Each became in some degree a slave even in becoming the master of other men: if rich, they stood in need of the services of others; if poor of their assistance' J.-J. Rousseau, *A Discourse on the Origin of Inequality* (1755).

7 See, for the former, Robert R. Williams, *Hegel's Ethics of Recognition* (1997) and, for the latter, Axel Honneth, *The Struggle for Recognition* (1995).

Freedom in the Modern Social World: The Philosophy of Right

In the *Philosophy of Right*, Hegel articulates the system of Objective Spirit which is actualized in the modern social world. In the very first section, he tells us that '[t]he subject-matter of the philosophical science of right is the *Idea of right* – the concept of right and its actualization' (*PR* §1). That is, he will describe the social world and its constitutive values (the 'actualization' of right) in terms of the concept – the canonical form of philosophical understanding as explained in the *System of Logic* and the *Encyclopaedia Logic*. This gives *PR* a structure which has mystified many readers. For Hegel, this rational or logical structure – of Universality, Particularity and Individuality (an obvious development of the Aristotelian concept of an *individual* substance as a *particular* instantiation of a *universal*) – has a validating or justifying power. This claim can be bracketed off if the institutions and their constitutive norms or values can be defended as having an independent cogency, which they may well have. If they do not, then the system stands or falls with one's acceptance of Hegel's metaphysics.

The Will

The key thought, fully explained in the 'Introduction' to *PR* and explored in this collection in the essays by Stephen Houlgate (Chapter 5), Terry Pinkard (Chapter 2) and Robert Pippin (Chapter 3) amongst others is that the social world is a structure of freedom because it fully actualizes the free will. The free will combines two elements, (i) the (universal) power of abstracting any (particular) determinate content of the will (as when one holds back from acting to satisfy a desire and considers whether this is the sort of thing one ought to be doing) and (ii) some (particular) desire which one seeks to satisfy, into (iii) a synthesis of universality and particularity when one finally decides to act (say, to satisfy this particular desire rather than that). So free agency combines the Hobbesian element of acting from desire and the Kantian element of distancing oneself from otherwise determining desires. On Hegel's account, one acts freely when he acts to satisfy desires which he has independently validated.

How is this achieved? The basic idea is that one acts freely when acting in accordance with values (social rules, laws or norms) that are endorsed as rational. Suppose Adam wants to eat the apple that he sees hanging from the tree. Then he reflects that the tree and its fruit belong to Bill who is the owner of it and has a right of exclusive possession to it. Since Adam endorses a regime of private property and rights of ownership as necessary for persons to be free, he acts freely when he restrains himself from taking the apple. If, on the other hand, he had (correctly) judged that the apple belonged to no-one and that he was within his rights to take it, Adam would have acted freely when he picked and ate it. These are models of free agency, as Hegel understands it. This is *positive*, as against *negative*, freedom on one understanding of the distinction drawn by Isaiah Berlin (Berlin, 1969). Hegel's careful analysis of the structure of the free will and the nature of free agency occupies the Introduction to *PR*. In a most helpful paper, 'The Unity of Theoretical and Practical Spirit in Hegel's Concept of Freedom' Stephen Houlgate explains how (*contra* Kant) Hegel integrates theoretical and practical reason in his account of the will. In so doing, he articulates carefully Hegel's analysis of the will and puts us in a position to see how this account illuminates the structure of *PR*.

The Argument of the Philosophy of Right

The values which are engaged when agents act freely are encoded in structures of social norms. How are these (correct or valid) norms to be identified? Hegel's quite distinctive story explains that they are constitutive of conceptions of the self with which modern agents have learned to identify. Allen Wood dubs this a *self-actualization* theory (Wood, 1990). It specifies that agents are free when their actions are guided by a nested series of normative systems, within each of which there are a range of self-descriptions which agents recognize and endorse, and thus apply to themselves and their fellow citizens. Thus modern agents identify themselves as persons, moral subjects striving to act conscientiously, family members, economic agents belonging to a variety of social classes, subject to the rule of law and acting in association with others in the corporations to which they belong as members, and finally as patriotic citizens of a political state with a variety of possible constitutional roles. Each of these identifications is ethically potent in that they demand subscription to characteristic ethical norms. This is a *communitarian* ethic insofar as the moral norms which direct the behaviour of free persons are the norms which are actualized by or embedded within the communities they inhabit, and it is ultimately the historically formed community – Hegel's Rational State – with which persons identify which gives them their ethical life.

In this collection I include two essays which illuminate this broad picture in different ways. In 'Freedom and Social Categories in Hegel's Ethics' (Chapter 2), Terry Pinkard presents Hegel's ethics as a development as much as a strong critique of Kant's ethics. For both philosophers the central concept of ethics is freedom, but the accounts of freedom that are given differ markedly as Pinkard explains. Hegel's theory of the will as developed in the argument of *PR* identifies it as 'a theory of what *are* and what *are not* the fully proper objects of the will'. Free agency is possible only in a society in which the values integral to the social categories of family, civil society and the state constitute the ethos or mores necessary for truly free agency. Only then 'does the individual find his liberation in duty' (*PR* §149) – as Kant well might have said, meaning something entirely different.

In 'Hegel and Institutional Rationality', Robert Pippin (Chapter 3) identifies the locus of freedom in the institutions which comprise ethical life and determine the duties of the citizen of the rational state. As was stated in the *Doppelsatz* those institutions must be rational. But what is institutional rationality other than means-end functionality of institutions to those individuals which these institutions serve? And how does rationality secure the freedom which is distinctive of the rational state? And is it the freedom of the individuals or the freedom of the state and its constituent institutions, or both, which is in question? Pippin explores these difficult issues.

Abstract Right

Thus (to follow the sequence charted in *PR*) in Part One 'Abstract Right' we see ourselves and others as 'persons', a technical term denoting the discrete atomic units of agency who are bearers of rights, making claims of right against others and recognizing the reciprocal claims on themselves that other persons make in turn. This is a primitive ethic of individual rights, traceable to Protestant claims on behalf of the integrity of the individual soul in its relations with God and the associated morality of natural rights that was developed in the fifteenth and

sixteenth centuries. Seeing ourselves as persons, we make claims of right to personal integrity, individual conscience and religious faith, and, crucially, to private property.

Two essays discuss Hegel's distinctive and important theory of private property. It is a commonplace that Hegel justifies a regime of private property on the basis of its contribution to personal freedom. But there are many ways of understanding this. Alan Patten in 'Hegel's Justification of Private Property' (Chapter 8) (incorporated into his (1999) book *Hegel's Idea of Freedom*), argues that Hegel elaborates and defends a 'developmental thesis' to the effect that possession of some measure of private property 'is essential for the development and maintenance of the capacities and self-understandings that make up free personality' (p.190). Peter G. Stillman in 'Hegel's Analysis of Property in the *Philosophy of Right*' (Chapter 9) takes the discussion further. Noticing that Hegel qualifies and reworks the account of private property rights that he had articulated in *Abstract Right* when he describes the major socio-political institutions of *Sittlichkeit* or ethical life, he considers how far the initial defence of private property is contradicted, sensibly compromised or transcended in what follows.

As persons we freely contract with others and develop a retributive conception of punishment as the legitimate enforcement of these rights. Hegel defends a complex and idiosyncratic version of the retributive theory of punishment which is examined in two essays in this collection: Jami L. Anderson's 'Annulment Retributivism: A Hegelian Theory of Punishment' (Chapter 10) and Dudley Knowles's 'Hegel on the Justification of Punishment' (Chapter 11) (incorporated into Knowles's 2002 *Hegel and the Philosophy of Right*). Anderson explains how Hegel's version of retributivism differs from the famous theory propounded by Kant and argues for the superiority of Hegel's theory. Knowles is more critical, demonstrating that Hegel's account is a 'near miss' that should and could have been improved upon had Hegel adopted a 'social contract' mode of argument. Knowles argues that such an argument would not have compromised Hegel's critical view of the social contract account of the actual origins of the state.

Modern persons, Hegel insists, are ineluctably individualists, separate persons as Rawls claims, governed by rights which operate as side-constraints in the fashion described by Robert Nozick (*pace* the modern communitarian who says such a person is a fiction). But Hegel differs from this style of contemporary liberalism in insisting that this minimal self-ascription cannot represent the whole truth about our moral personality since an ethics of personal rights would be impoverished to the point of contradiction. Persons would claim enforceable rights but would be unable to establish a stable system of just rights enforcement. A state of nature regime of rights enforcement would descend into a nightmare of revenge and vendetta in the way John Locke describes in the *Second Treatise of Government*.

Morality

We are persons, but more than persons. In the following chapter, *Morality (Moralität)* Hegel explores the possibility that we might establish a set of moral norms to which all might subscribe on the basis of an understanding of ourselves as moral subjects. This of course was Kant's project and throughout this chapter Hegel stalks Kant, gathering insights concerning the nature of human agency but finally rejecting Kant's moral psychology (with its dichotomy of duty and inclination) and Kant's normative ethics (with its employment of the Categorical

Imperative as the definitive test of any proposed moral principle). ‘From this point of view, no immanent theory of duties is possible’ (PR §135), Hegel concludes.

It would be a mistake to dismiss Hegel’s critique of Morality (capitalized because Hegel employs it as a technical term) as entirely negative. A crucial insight which he endorses is the ‘*right of the subjective will* [which] is that whatever it is to recognize as valid should be perceived by it as good’ (PR §132). If we take this as the claim that neither priests nor princes can just dictate to us how we should behave (as Kant equally insisted), that norms of conduct should be understood and endorsed by all those to whom they apply, we can see Hegel as accepting a crucial thesis of modern liberalism in its broadest sense. It is a matter of very great dispute how far Hegel respects this important right in the details of the argument to follow. It is also important that one recognizes that this right is entirely formal. It does not tell us what the good is. It does not deliver ‘an immanent theory of duties’. For that we have to investigate Ethical Life (*Sittlichkeit*), Hegel’s distinctive name for the actual norms of the Rational State, that is, the community he inhabits.

In this collection we include four essays discussing the Morality section of the *Philosophy of Right*. Alan W. Wood’s ‘The Emptiness of the Moral Will’ (Chapter 12) (later incorporated into Wood’s 1990 book *Hegel’s Ethical Thought*) examines the charge Hegel brought against Kant to the effect that his normative ethics was empty viz. impotent in the matter of delivering concrete moral judgements appropriate for specific cases. Wood argues that the real source of Hegel’s criticism of Kant is his rejection of Kant’s moral psychology. In *Hegel’s Ethical Thought* (and in his 1999 *Kant’s Ethical Thought*) Wood carefully investigates Hegel’s claim that the categorical imperative cannot yield an immanent doctrine of duties. Kenneth Westphal’s essay, ‘Kant, Hegel and Determining our Duties’ (Chapter 13) takes a careful look at the issues involved, stressing the continuities between Kant and his vigorous opponent. In ‘Hegel’s Theory of Moral Action, its Place in his System and the “Highest” Right of the Subject’, (Chapter 14) (incorporated into his 2007 monograph *Hegel’s Philosophy of Right*) David Rose summarizes much good modern work (by Charles Taylor, Michael Quante and Kenneth Westphal *inter alia*) on the philosophy of action which underpins Hegel’s own account of our moral psychology and explains how this in turn grounds Hegel’s endorsement of true moral conscience. This enterprise is carried further in Frederick Neuhouser’s essay ‘Ethical Life and the Demands of Conscience’ (Chapter 15) (which anticipates part of his important monograph *Foundations of Hegel’s Social Theory*). Neuhouser opens up the question of how far Hegel’s endorsement of the rights of the true conscience in the Morality chapter are compromised by his description of the institutions of ethical life.

Ethical Life

The English Idealist, F.H. Bradley (1846–1924), described the subject of ethics as ‘My Station and Its Duties’. This gives a clear sense to the difficult term ‘Ethical Life’. Our duties are furnished by our ethical location (our station in life) in actual communities of sentiment fashioned in history. If this sounds like subjection rather than freedom, Hegel emphasizes that the opposite is the case. ‘A binding duty can appear as a *limitation* ... the individual however finds his *liberation* in duty’ (PR §149). Rather than constrain us, we shall find that our duties make us free: once we understand and endorse the requirements, we find our natural desires tamed and controlled. We understand that the institutions of ethical life, including family life,

civil society and most notably the state, enable us to realize personal capacities that would otherwise fail to find an adequate expression.

Thus when we understand the nature of life in the modern nuclear family, (the first element of ethical life that Hegel studies) – a life grounded in mutual love but structured by duties to parents, spouse and children – we will agree that only in this form of domesticity can the human capacity for love and long-term commitment be adequately realized. There is much truth in Hegel's account, but modern readers may find it dated and ethically unacceptable – not least in respect of Hegel's description of the role of women. Hegel's writings are a good target for feminists, but a focus on the passages where Hegel insultingly compares women to plants and tells us that 'when women are in charge of government, the state is in danger' (*PR* §166A) will miss the nuances of his position. In 'Spirit's Phoenix and History's Owl or the Incoherence of Dialectics in Hegel's Account of Women', (Chapter 16) Benjamin R. Barber carefully reviews the issues and draws some strong critical conclusions concerning Hegel's methodology as well as his account of a woman's place in both the family and society at large.

In the second element of ethical life, Civil Society (a curiously abstracted construction, gathering together the major non-political institutions of the modern state) Hegel explains how economic, legal, and administrative structures enable 'concrete persons' (chiefly male family members) to satisfy the particular self-interest of themselves and their families. Guided mainly by the writings of British economists, notably Smith and Ricardo, Hegel developed strong and interesting views (which curiously Marx never discusses directly) on how the capitalism of his day is a liberating force, how the ever more productive forces released by rapid industrialization enable humans to satisfy their increasingly sophisticated demands, and how social classes form in the different segments (agricultural, business and bureaucratic) of economic life.

The administration of law protects the citizens' rights, enforces contracts, and corrects the deficiencies of state of nature punishment systems, as these were explained in Abstract Right. Two further elements of Civil Society are the 'Police', all those social agencies designed to provide regulative and infrastructural support to the system of production, including public education services, and the 'Corporations', a strange confection of mediaeval guilds, employers' associations, and trades unions. All these institutions effect in their fashion a transformation of self-interest into a common will as individuals associate together to serve their particular purposes more efficiently. But one problem of modern social life obdurately resists solution. He portrays poverty as a deforming scar on the face of modern civilization caused not so much by idleness and stupidity as by the structural problems of market capitalism, for example, when markets collapse or technological change makes ancient skills redundant. The state is evidently necessary to fashion remedies. Alexander Kaufman discusses Hegel's treatment of the problems of pauperisation in 'Community and Indigence: A Hegelian Perspective on Aid to the Poor' (Chapter 17) although he fails to mention Hegel's curious view that colonization is a policy option to which the modern state may resort (*PR* §§246–8).

The State

Hegel speaks of the state in two senses. In the first, the Rational State, we are to understand the modern system of social freedom which wraps up in a harmonious construction all the

normative systems encountered in the modern world. Thus the Rational State is the integration of the ethical demands of personal rights, moral subjectivity, family life, civil society and the political institutions of the state. These ethical demands are harmonious in the sense that individuals can recognize and respect moral rules which derive from all these sources without finding themselves in circumstances of tragic conflict wherein rules conflict and the complex identity of the modern self is torn apart. If there are conflicts they will be resolved by ordering principles, most conspicuously by obeying the laws of the state. Since the State is Rational there will be no modern Antigones, no moral rebels.

To paraphrase *PR* §260: ‘The state is the actuality of concrete freedom. As members of it, persons should be able to develop all their capacities and satisfy all the interests they have as individuals, as family members and as members of civil society. But they should not and do not live as private persons alone. They recognize their universality, their ties with others. And these ties bind them to serve a common purpose, a universal end which they freely acknowledge as they perform the duties incumbent on them in their particular stations in life, as determined ultimately by the state.’

The second sense of the term ‘state’ denotes the ‘political state proper’ or the ‘strictly political state’ (*PR* §267). This is a political system with a constitution that Hegel describes in some detail. His presentation of it disobeys the logical principles which he himself advanced as constituting the rational structure of all reality. At its head is a monarchy which has a symbolic personal role, dotting the ‘i’s and crossing the ‘t’s (*PR* §280A), yet also has formidable and decisive political powers. The second element of the constitution is the executive, a civil service owing allegiance to the monarch who appoints the senior ministers. The third element is the legislative power. This includes the monarch and the executive oversees its operations. In addition, there are two Estates (roughly assemblies): one a collection of wealthy landowners, the other appointed from the corporations (and not elected by universal suffrage). Altogether the constitution of the political state is a ramshackle, bodedged edifice.

Is Hegel a liberal or a conservative political theorist? Many believe that Hegel’s political position shifts from an early radicalism to a later conservatism. There are biographical reasons for accepting this view since Hegel felt forced to accommodate his published views to the critical eye of the reactionary censor in 1820, prior to publication in 1821. There are textual grounds for believing that he compromised his political-philosophical beliefs, as reported by K.-H. Ilting in his edition of Hegel’s *Vorlesungen über Rechtsphilosophie*. Others insist that Hegel was always a liberal (or, less plausibly, always a conservative). But the sensible reader will not take a position on the general question without the most careful evaluation of Hegel’s writings. In ‘Hegel and Liberalism’ (Chapter 18) Paul Franco conducts a careful discussion of Hegel’s place on the liberal/radical-to-conservative/communitarianism spectrum that takes into account the best modern work.

A crucial site for investigating these questions is Hegel’s treatment of patriotism – the cast of mind of the typical citizen of the modern state. Is the citizen of the rational state a docile creature, unreflective and contented, willing to wave patriotic flags and to fight for the state as soon as asked? Or can the patriotic citizen be politically alert and reflective, prepared to question the philosophical credentials of the claim to authority made by the modern state and the legitimacy of both its constitution and the policies it enacts?

In the essay, ‘Hegel on Political Sentiment’, Joseph J. O’Malley (Chapter 19) raises two questions: first, O’Malley challenges K.-H. Ilting’s position, concluding that there are

no significant (and compromising) political differences between Hegel's views as reported from his 1818–19 lectures and the 1921 published text. But, secondly, putting to one side these biographical and bibliographical issues, we can consider directly whether or not the distinctive political disposition of *patriotism* as Hegel describes it in *PR* §§ 268–70 requires or occludes a reflective, philosophically grounded, comprehension by just about all citizens of the rational basis of the duties with which they comply. If this compliance is habitual and uncomprehending (in the way of the *hoi polloi* of Plato's Republic who believe the myth that they are fashioned from base metal) Hegel's description of the mind-set of the typical citizen fails to meet the condition set by the right of subjective freedom as explained at *PR* §132.

These are the conclusions that it is safe to draw: Hegel's philosophical method commits him to a unique style of conservatism. 'When philosophy paints its grey in grey, then has a shape of life grown old. By philosophy's grey in grey it cannot be rejuvenated but only understood. The owl of Minerva spreads its wings only with the falling of the dusk' (*PR*, Preface). We cannot tell the world how it ought to be; we are locked into the ethical world we inhabit and seek to comprehend. But this doesn't bar all change. The reality of the world in its fine detail may not reflect the ethical principles which underlie it, so there is space for an immanent critique. Furthermore, the grounding principles of liberalism – doctrines of human rights, the right of the subjective will, as well as associated concrete political freedoms (freedom of conscience and worship, freedom of the press, freedom to find one's own career path, amongst many others) – are all entrenched *within* Hegel's Rational State. They are not moral luxuries or indulgencies, they cannot be rejected; they are as much a feature of the modern political world as Hegel (mistakenly) takes a constitutional monarchy to be. In these respects Hegel is a liberal, but this is not the whole story since there are many critical questions the reader can target at the detail of Hegel's political settlement.

The modern rational state is one state amongst others. Hegel is a stern critic of Kant's cosmopolitan stance as James Bohman describes in 'Hegel's Political Anti-Cosmopolitanism' (Chapter 20). Hence in the modern world, as we all know too well, states may find themselves at war. Hegel says this 'should not be regarded as an absolute evil' (*PR* §324) since good may come of it. It may quicken otherwise dormant and degenerating sentiments of patriotism. Some have found Hegel's views on war abhorrent. Others insist that when a full and properly nuanced account is given this should be acceptable to sophisticated non-pacifists.

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Part I

The Distinctive Character of Hegel's Approach to Political Philosophy

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[1]

Hegel's *Doppelsatz*: A Neutral Reading

ROBERT STERN*

IN THE PREFACE to the *Philosophy of Right*, Hegel makes one of his most well-known and frequently discussed remarks:

What is rational is actual;
and what is actual is rational

This conviction is shared by every ingenuous consciousness as well as by philosophy, and the latter takes it as its point of departure in considering both the *spiritual* and the *natural* universe. (*GPR*, 24–25; *EPR*, 20)¹

Sometimes known as the *Doppelsatz* (or “double dictum”),² this saying has been seized on by Hegel’s critics as a summation of his conservatism and quietism, whilst his defenders have argued that this is not so, and that read correctly it in fact harbors a critical dimension that allows the *Philosophy of Right* as a whole to be read in a progressive way.

It is perhaps a sign of the growing respect for Hegel and his thought that the conservative reading of the *Doppelsatz* has lost virtually all support (at least among Hegel scholars), while the critical or progressive reading holds sway.³ My aim in this paper is not to return to the conservative reading; but I want to argue that the *Doppelsatz* should not be given a critical reading either, so that the position I offer is neutral between the two. My claim will be that when Hegel identifies what is

¹ All references in the text marked *GPR* are to G. W. F. Hegel, *Grundlinien der Philosophie des Rechts*, in *Theorie Werkausgabe*, eds. Eva Moldenhauer and Karl Markus Michel, 20 vols. and Index (Frankfurt am Main: 1969–71). All references in the text marked *EPR* are to G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1991). In cases where the translation has been modified, this is noted.

² The term was introduced by Dieter Henrich in his “Einleitung des Herausgebers: Vernunft in Verwirklichung,” in Dieter Henrich, ed., *Hegel: Philosophie des Rechts: Die Vorlesung von 1819–20 in einer Nachschrift* (Frankfurt am Main: Suhrkamp, 1983). See also Michael O. Hardimon, *Hegel’s Social Philosophy: The Project of Reconciliation* (Cambridge: Cambridge University Press, 1994), 52.

³ For a fairly exhaustive list of references to the conservative reading, see M. W. Jackson, “Hegel: The Real and the Rational,” in *The Hegel Myths and Legends*, ed. Jon Stewart (Evanston: Northwestern University Press, 1996), 19–21. References to some of the main progressive readings are given below, especially in note 8.

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actual with what is rational in the *Doppelsatz*, his intention is not to offer a normative assessment of what is actual (as both the conservative and progressive readings assume, differing only over what exactly is being normatively endorsed); rather, it is to suggest that genuine philosophy must be committed to reason in its methods of inquiry, if it is to properly undertake an investigation into the "spiritual universe" as well as the "natural" one. On my view, then, Hegel identifies what is actual and what is rational in the *Doppelsatz* not in order to say that the actual is right or good (to "legitimate" or "sanctify" the actual, as it is sometimes put⁴), but to remind his readers that philosophy has a basic commitment to reason as the proper way to engage with the world at a fundamental level (the level of what is actual); it is this that makes the identity of what is actual with what is rational a "point of departure" for philosophy. The *Doppelsatz* is thus a defense of philosophical rationalism, rather than a normative claim about *was ist wirklich* in either a conservative sense (as simply what is) or a progressive sense (as what is when properly realized).

I will begin (in §1) by briefly outlining the way in which the debate concerning the *Doppelsatz* has been conducted, and will then (in §§2–3) contrast this with the neutral reading I propose; finally (in §4) I will defend that reading against possible objections.

I

The conservative reading to which contemporary critical or progressive readings of the *Doppelsatz* are opposed is exemplified by Karl Popper in his *Open Society and Its Enemies*, where he claims that according to Hegel "what is, is good,"⁵ and where he takes the *Doppelsatz* as a summary of that Hegelian view:

Hegel [maintains] that everything that is reasonable must be real, and everything that is real must be reasonable, and that the development of reality is the same as that of reason. And since there can be no higher standard in existence than the latest development of Reason and of the Idea, everything that is now real or actual

⁴ See Rudolf Haym, *Hegel und seine Zeit*, repr. (Georg Olms: Hildesheim, 1962), 367–68; translated by Julius Kraft in *G. W. F. Hegel: Critical Assessments*, 4 vols., ed. Robert Stern (London: Routledge, 1993), I, 221–22: "The theory of the divine right of kings and the theory of the *obedientia absoluta* are innocent and innocuous compared with the terrible doctrine which sanctifies the existing because it exists." See also Friedrich Engels, *Ludwig Feuerbach und der Ausgang der klassischen deutschen Philosophie*, in Karl Marx and Friedrich Engels, *Werke*, 39 vols. (Berlin: Dietz Verlag, 1964–68), XXI, 266; *Ludwig Feuerbach and the Outcome of Classical German Philosophy*, in Karl Marx and Friedrich Engels, *Selected Works*, 2 vols. (Moscow: Foreign Language Publishing House, 1962), II, 361, where Engels notoriously misquotes the *Doppelsatz*: "No philosophical proposition has earned more gratitude from narrow-minded governments and wrath from equally narrow-minded liberals than Hegel's famous statement: 'All that is real is rational: and all that is rational is real.' That was tangibly a sanctification of things that be, a philosophical benediction bestowed upon despotism, police-government, Star Chamber proceedings, and censorship."

⁵ Karl Popper, *The Open Society and Its Enemies, Volume II: The High Tide of Prophecy: Hegel, Marx, and the Aftermath*, 5th ed. (London: Routledge, 1966), 41. See also Bertrand Russell, *History of Western Philosophy*, 2nd ed. (London: George Allen & Unwin, 1961), 702: "the identification of the real and the rational leads unavoidably to some of the complacency inseparable from the belief that 'whatever is, is right.'"

exists by necessity, and must be reasonable as well as good. (Particularly good, as we shall see, is the actually existing Prussian state.)⁶

Thus, on Popper's reading, Hegel's *Doppelsatz* is taken to be conservative, in the sense that it claims that whatever exists (such as the Prussian state of Hegel's time) is rational and therefore good, and to be quietistic, in the sense that it claims that everything that is rational and good already exists: the *Doppelsatz* therefore rules out the possibility of normative criticism of current social arrangements (and hence is conservative), and the need to do anything to make them better since the good is already realized (and hence is quietistic). Conservative readings of this sort then characteristically link the *Doppelsatz* to Hegel's wider philosophical position (so, in Popper's case, he ties it to Hegel's supposed historicism, where Hegel is said to hold that "there can be no higher standard in existence than the latest development of Reason and of the Idea"), and to the historical background to the *Philosophy of Right* (where Hegel is seen as a spokesman for the Prussian restoration).

In response to this conservative reading of the *Doppelsatz*, defenders of Hegel have argued that it is based on a fundamental misconception of what he is saying.⁷ In particular, it is emphasised that in the *Doppelsatz*, Hegel uses the term 'actuality' (*Wirklichkeit*), and this is seen as having a technical sense for Hegel: to be "actual," something must not just exist, but must conform to its essential nature.⁸ It is argued, therefore, that Hegel is not simply claiming here that "what is, is good," if that is taken to mean "whatever happens to be, is good." For, it is only what is *actual* (in Hegel's sense) that is good, which will exclude many *existing* states—states which exist but which do not properly exemplify what an actual state should be. Given this distinction, therefore, it is argued that Hegel's *Doppelsatz* is neither conservative nor quietistic. It is not conservative, because Hegel's notion of "actuality" leaves room for a critical gap between a thing as it is (as it exists) and its essence (as it should be), in those cases where states are not actual, and therefore not rational. And the *Doppelsatz* is not quietistic, because we may intelligibly act to make an existing state more *wirklich*, by using Hegel's essentialist conception of "actuality" to make sense of the idea of working to draw the existence of

⁶ Karl Popper, *The Open Society and Its Enemies*, 41.

⁷ Another response, which I will not consider in this paper, is to argue that while the *Doppelsatz* can be read conservatively, this was added (along with other material, such as the attack on Fries) in order to deceive the censor, and is in fact at odds with the real progressive intentions buried in the main body of the book. (See Karl-Heinz Ilting, "Der exoterische und der esoterische Hegel (1824–1831)," introduction to G. W. F. Hegel, *Vorlesungen über Rechtsphilosophie (1818–1831)*, ed. Karl-Heinz Ilting, 4 vols. [Stuttgart-Bad-Canstatt: Friedrich Frommann, 1973], IV, 45–66.) On this account, it is the earlier variants on the *Doppelsatz* (which I will discuss below) that express its critical potential, rather than the *Doppelsatz* itself.

⁸ Cf. Walter A. Kaufmann, "The Hegel Myth and Its Method," *Philosophical Review* 60 (1951): 469; T. M. Knox, "Translator's Notes," in G. W. F. Hegel, *Hegel's Philosophy of Right*, trans. T. M. Knox (Oxford: Oxford University Press, 1952), 302; Shlomo Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972), 127; Paul Owen Johnson, *The Critique of Thought: A Re-examination of Hegel's Science of Logic* (Aldershot: Avebury, 1988), 139–40; Steven B. Smith, *Hegel's Critique of Liberalism* (Chicago: University of Chicago Press, 1989), 223–24; Hardimon, *Hegel's Social Philosophy*, 53–54; Paul Franco, *Hegel's Philosophy of Freedom* (New Haven and London: Yale University Press, 1999), 132.

things closer to their essence, for example through social reform.⁹ Progressive readings of this sort will then characteristically go on to question conservative readings of Hegel's wider philosophical position and the conservative account of Hegel's political allegiances at the time when the Preface to the *Philosophy of Right* came to be written.

I think that most would now agree that the proponents of the progressive reading of the *Doppelsatz* are right to claim that as it stands the conservative reading is misguided, and that it is a mistake to interpret it as saying that "what is, is good." It is then natural to think, if the conservative reading is false in this way, then this in itself establishes the truth of the progressive reading, so that precisely in drawing on the *Existenz/Wirklichkeit* distinction here, Hegel's aim was in fact to signal the critical implications of the *Doppelsatz*, in the way that the progressive reading suggests. However, I want to argue that if we look closely at the context of the *Doppelsatz* within the Preface of the *Philosophy of Right*, this is not so clear. That is, I will argue in the next two sections that while the proponents of the progressive reading are right to claim that the *Doppelsatz* is not saying that "what is, is good," they are wrong to suggest that instead it is saying "only what is actual, is good, and much that merely exists is bad." I will argue, rather, that the *Doppelsatz* is neutral on such normative questions, so *neither* the conservative *nor* the progressive reading is correct.

2

One assumption concerning the *Doppelsatz* that both the conservative and the progressive readings of it share is that in using the term *vernünftig* here, Hegel is (in part at least) expressing a positive normative assessment of it. As Michael Hardimon puts it: "'Rational,' as Hegel uses the term, has both an epistemic and a normative aspect; roughly speaking, it means both rationally intelligible and reasonable or good."¹⁰ This assumption concerning Hegel's use of the term 'rational' in the *Doppelsatz* is of course what gets the whole dispute between conservative and progressive readings going in the first place: Hegel is assumed to be endorsing something as right or good, so the question is, is he endorsing things as they happen to be (as on the conservative reading), or things as they would be if fully "actual" (as on the progressive reading)?

Now, the question of Hegel's understanding of the term 'rational' is of course a complex one, as it too is a technical term for Hegel, and to explain it fully would

⁹ Cf. Frederick Neuhouser, *Foundations of Hegel's Social Theory: Actualizing Freedom* (Cambridge, Mass.: Harvard University Press, 2000), 257: "Despite Hegel's reputation as an apologist for the Prussian state, the institutions he endorses are obviously not identical to those of nineteenth-century Prussia. It is precisely here—in the disparity between real (existing) institutions and those that are actual in Hegel's technical sense—that the possibility of social criticism is to be found. For the theory of *Sittlichkeit*'s idealized account of modern social institutions provides us with the resources for seeing where existing institutions do not fully measure up to what they should be and for thinking about how they can be made to conform to their own (immanent) rational principles."

¹⁰ Hardimon, *Hegel's Social Philosophy*, 53. See also M. J. Inwood, *Hegel* (London: Routledge, 1983), 497, whom Hardimon cites in support of his view. See also Emil L. Fackenheim, "On the Actuality of the Rational and the Rationality of the Actual," in Jon Stewart, ed., *The Hegel Myths and Legends* (Evanston: Northwestern University Press, 1996), 42–43.

involve a detailed account of his whole philosophical position. However, the narrower suggestion I want to make here is that when Hegel comes to use the term 'rational' in the *Doppelsatz* in the Preface to the *Philosophy of Right*, it may be wrong to assume he is using it normatively; rather, he may be using the term purely *methodologically*. On this account, that is, in stating that the actual is rational and the rational is actual, Hegel is telling us that what is actual can be investigated by reason and what reason investigates is the actual, rather than that some state of affairs is right or good. In other words, the *Doppelsatz* is simply part of his argument for having "faith in reason" as the central method of philosophical inquiry, rather than an assessment of the normative status of 'the actual,' however that term is understood.¹¹

To see that this is so, it is necessary to look in more detail than is usually done at the context of the *Doppelsatz* in the Preface.¹² I will begin by first exploring the kind of thing Hegel characteristically tries to achieve in the introductory remarks to his works, and then in the next section will use this to help me offer a detailed reading of the Preface itself along the lines I have suggested.

As is well-known, Hegel had a rather contemptuous view of the place of prefaces and introductions in philosophical works, holding that they were too often used by lazy readers to avoid getting to grips with the works themselves,¹³ while if a philosophical system could be summed up in a preface, it was surely of little value. He therefore does not use the introductory sections of his writings to attempt any real exposition of the book as a whole, or any defense of its conclusions; instead, he mainly uses them to deal with meta-level issues, concerning the nature of the work as a work of *philosophy*, and therefore with the question of what philosophy (in Hegel's view) is.

In Hegel's discussions of the nature of philosophy, he characteristically presents it as a discipline in crisis, held in deserved disrepute in many quarters, given the failure of contemporary philosophers to find a proper way of doing the subject. He then warns against the dangers of this disrespect for philosophy, as tantamount to a disrespect for reason and thought itself, and offers his own philosophical approach as a way of reviving the philosophical tradition, and thus as enabling us to return to a kind of rationalism that is in grave danger of being lost.

¹¹ See the famous passage from Hegel's inaugural address in Berlin: "To begin with, however, I can demand nothing but that you bring with you a confidence in *science*, *faith in reason*, confidence and *faith in yourself*. The *courage of truth*, *faith in the power of spirit* is the first condition of *philosophical study*; man must honour himself and *consider himself worthy of what is highest*. He cannot think highly enough of the greatness and power of the spirit; the self-contained essence of the universe *has no strength in itself* which could resist the courage of knowledge; it must open itself to knowledge, laying its riches and depth before its eyes and allowing its enjoyment" (G. W. F. Hegel, *Berliner Schriften 1818–1831*, in *Sämtliche Werke*, ed. Johannes Hoffmeister, [Hamburg: Felix Meiner, 1956], XI, 8–9).

¹² One work that provides a helpful discussion of the Preface as a whole, though without hereby arriving at any particularly new insights into the *Doppelsatz*, is Adriaan Th. Peperzak, *Philosophy and Politics: A Commentary on the Preface to Hegel's Philosophy of Right* (Dordrecht: Nijhoff, 1987).

¹³ See G. W. F. Hegel, "Aphorismen aus Hegels Wastebook," in *Theorie Werkausgabe*, II, 556–57; "Aphorisms from Hegel's Wastebook," trans. S. Klein, D. L. Roachnick and G. E. Tucker, *Independent Journal of Philosophy* 3 (1979): 4: "The usual royal road in philosophy is to read prefaces and book reviews, in order to get an approximate idea of things." See also G. W. F. Hegel, *Phänomenologie des Geistes*, in *Theorie Werkausgabe*, III, 11–12; *The Phenomenology of Spirit*, trans. A. V. Miller (Oxford: Oxford University Press, 1977), 1–2.

So, for example, in the Preface to the first edition of the *Encyclopedia Logic*, Hegel comments on the contemporary “indifference” to and “contempt” for philosophy “as a science [*Wissenschaft*],” such that philosophy has become shallow and empty, and thereby deserves to have fallen from its cultural preeminence. Nonetheless, he suggests that it is impossible for us to lose respect for “the *higher cognition*” of philosophy proper, since “the inner drive of rational insight” is what “alone gives man his dignity.” Once philosophy returns to this “*higher cognition*”—which with his own work he clearly thinks it will—philosophy will then naturally regain its place as the pinnacle of human culture, while at the same time putting that culture on the right path.¹⁴ Then, in the Preface to the second edition, Hegel focuses more on those who see philosophy as a threat to other ways of thinking, particularly religion and morality, where again he is concerned to stress the need these ways of thinking have of philosophy, if they are to retain their rational core and proper justification. Likewise, in the Introduction to the *Philosophy of Nature*, Hegel considers his philosophical treatment of nature in relation to the empirical sciences, and attempts to show that there is a distinctive place for the former as a particular sort of inquiry, different from but related to the latter. Similar reflections on the nature of philosophy can be found in the introductory sections to several other works, such as the *Phenomenology of Spirit*,¹⁵ and Hegel’s lectures.¹⁶ Thus, in general, Hegel takes the opportunity of his prefaces and introductions not to summarize his position, or to outline his argument for it, but to “declare myself about the external bearing of my philosophical activity on the cultural concerns of our time,”¹⁷ where this means to stake out his view of what philosophy should be, and what role it should serve within that culture.

Now, as we have already seen, Hegel thinks that philosophy can take up its proper cultural place only if it satisfies “the continuing inner drive of rational

¹⁴ G. W. F. Hegel, *Enzyklopädie der philosophischen Wissenschaften im Grundrisse: Erster Teil, Die Wissenschaft der Logik*, in *Theorie Werkausgabe*, VIII, 12–13; *The Encyclopedia Logic: Part 1 of the Encyclopedia of Philosophical Sciences*, trans. T. F. Geraets, W. A. Suchting and H. S. Harris (Indianapolis: Hackett, 1991), 2–3.

¹⁵ For further discussion, see Robert Stern, *Hegel and the Phenomenology of Spirit* (London: Routledge, 2002), 30–36.

¹⁶ See Hegel’s inaugural address at Heidelberg, delivered in 1816:

But the distress of our time, already mentioned, and the interest of great events in the world [i.e., the Napoleonic wars and their consequences], has repressed, even among ourselves, a profound and serious preoccupation with philosophy and frightened away more general attention to it. Thus what has happened is that, since sterling characters have turned to practical matters, superficiality and shallowness have managed to hold the floor in philosophy and make themselves at home there. We may well say that ever since philosophy began to raise its head in Germany, the outlook for this science has never been so poor as at just this present time; never have Vacuity and Conceit so endowed it with superficiality, never have they thought and acted in philosophy with such arrogance as if they ruled the roost there. To work against this superficiality, to work together in German seriousness and honesty, and to rescue philosophy from the cul-de-sac into which it is sliding—this is our task, firmly believing that we are called to it by the deeper spirit of the age. (*Vorlesungen Über die Geschichte der Philosophie I*, in *Theorie Werkausgabe*, XVIII, 12–13; *Hegel’s Introduction to the Lectures on the History of Philosophy*, trans. T. M. Knox and A. V. Miller [Oxford: Oxford University Press, 1985], 2)

¹⁷ Hegel, *Enzyklopädie Logik*, 14; *Encyclopaedia Logic*, 4.

insight, which alone gives man his dignity."¹⁸ Hegel believes that true philosophy can be contrasted to other ways of thinking in the way it satisfies that drive, and thus a culture without a philosophy that gives us rational insight in this way is an impoverished culture. He therefore criticizes those who think philosophy cannot give us rational insight; those who think rational insight can be provided by other ways of thinking, such as the empirical sciences, or religion; and those who think we would be better off without aspiring to rational insight at all. Against the first position, he argues that while the inadequate philosophical positions of his contemporaries may indeed fail to provide us with rational insight, the classical tradition in its own terms did, and it is this tradition that he claims he can renew. Against the second position, he argues that other intellectual disciplines are not adequate in themselves to provide the kind of rational insight provided by philosophy. And against the third position, he argues that no acceptable substitute can be found for reason, in enabling human beings to make sense of the world and reach proper conclusions in their inquiries.

Thus, in general, the prefaces and introductions of Hegel's works serve as a kind of manifesto for the rationalistic programme that the works themselves are designed to fulfil. In these prefaces and introductions, Hegel can frequently be found attempting to diagnose the current lack of respect for philosophy, where that diagnosis is based on methodological issues: philosophers no longer care about conducting their inquiries in a properly "scientific" manner, as they no longer have any faith in the *more geometrico* of the early modern rationalists, so that instead they turn to less rational methods. Hegel agrees that this mathematical method had its limitations; but by turning away from any sort of "scientific" method completely, contemporary philosophers have reduced the significance of philosophy; their conclusions are seen to be purely subjective, arbitrary, and ungrounded, a matter of empty speculation. Hegel clearly believes, therefore, that by offering a new kind of rational method, he can show how philosophy can be conducted in a manner that will not lead it to becoming marginalized in this way, but which will return it to its proper place at the center of our thought.¹⁹

Seen in this context, I believe it can be shown that the Preface of the *Philosophy of Right* sets out to argue along similar lines, and to claim that philosophy must be

¹⁸ Hegel, *Enzyklopädie Logik*, 13; *Encyclopaedia Logic*, 3.

¹⁹ See Hegel, *Phänomenologie*, 47–48; *Phenomenology*, 28–29:

[C]urrent opinion itself has already come to view the scientific regime bequeathed by mathematics as quite *old-fashioned*—with its explanations, divisions, axioms, sets of theorems, its proofs, principles, deductions, and conclusions from them. . . . But we have already pointed out that, once the necessity of the Notion has banished the slipshod style of conversational discussion, and along with it the pedantry and pomposity of science, they are not to be replaced by the sort of non-method of presentiment and inspiration, or by the arbitrariness of prophetic utterance, both of which despise not only scientific pomposity, but scientific procedures of all kinds.

As Walter Kaufmann has pointed out (in his *Hegel: Reinterpretation, Texts and Commentary* [London: Weidenfeld and Nicholson, 1966], 426), this passage contains an allusion to Fries in its talk of "presentiment" (*Ahnens*), with its reference to Fries' *Wissen, Glaube und Ahndung* of 1805 (Fries was deliberately using an archaic spelling in his title). As we shall see, Fries comes in for similar criticism on methodological grounds in the Preface to the *Philosophy of Right*.

conceived as a rational enterprise if it is to carry conviction, this time in its speculations about the social world. I will therefore suggest that Hegel's references to "what is rational" in the *Doppelsatz* should be seen in this light. If this is correct, then in the *Doppelsatz* Hegel should not be understood as making any normative claim about "the actual," but rather as making a claim about the relation between "the actual" and philosophy as a rationalistic discipline. Hence my suggestion is that the *Doppelsatz* is neutral on the normative issue that divides the conservative and progressive readings.

3

In this section, I will look in some detail at the Preface to the *Philosophy of Right*, and argue that it very much conforms to the pattern we have already identified concerning what Hegel sets out to establish in his prefaces and introductions.

At the end of the Preface to the *Philosophy of Right*, Hegel makes his usual disparaging comments on what its role has been: "But it is time to conclude this foreword; as a foreword, its function was in any case merely to make external and subjective comments on the points of view of the work to which it is prefaced" (*GPR*, 28; *EPR*, 23). We are warned, therefore, that the Preface is designed merely to orient the reader in general terms about the approach Hegel is taking, and is not itself part of the "scientific and objective treatment" (*GPR*, 28; *EPR*, 23) that will follow. As we have seen, Hegel's preferred way of orienting the reader in this manner is to offer some reflections on the current state of philosophy, and of how his work stands in relation to it.

As we should now expect, therefore, Hegel starts the Preface by remarking on "the shameful decline into which [philosophy] has fallen in our times" (*GPR*, 12; *EPR*, 10). Characteristically, Hegel accepts that part of the blame lies with philosophy itself, for philosophy has abandoned some of its previous methods, "of definition, classification, and inference" (*GPR*, 12; *EPR*, 10), and as a result has lost its intellectual rigour, "to make way for the arbitrary pronouncements of the heart, of fantasy, and of contingent intuition" (*GPR*, 12; *EPR*, 10). Hegel emphasizes that his "outline" of "natural law and political science" (the subtitle of the *Philosophy of Right*) will be conducted in a properly thought-out manner, using a more advanced philosophical method: this will show how the subject under discussion can be apprehended in a "logical spirit," as we find that there is a "logical progression" from one part of the inquiry to the next (*GPR*, 13; *EPR*, 10). Hegel is of course advertising here his method of immanent or dialectical critique, which examines the nature and limits of various positions by beginning with the most elementary, and so works up to more sophisticated positions in which the simpler ones are integrated and their problems resolved, until a stable outlook is attained. Hegel thus argues that the proper way to proceed is not to begin with any presuppositions about what right is, but to "observe the proper immanent development of the thing [*Sache*] itself" (*GPR*, §2, 30; *EPR*, 26), as conceptions of the right and freedom become more complex and less inadequate through the process of internal critique. This is Hegel's "philosophical manner of progressing from one topic to another and of conducting a scientific proof" (*GPR*, 12; *EPR*, 10) which he says he will be following as far as possible in the *Philosophy of Right*, "which

arranges and orders the essential elements" (*GPR*, 11; *EPR*, 9) of the social world into an integrated hierarchy, and so reveals their conceptual development and interconnection.²⁰

Now, Hegel acknowledges that in the intellectual climate of his time, where "it is imagined that what philosophy puts forward is as ephemeral a product as Penelope's weaving, which is begun afresh every day" (*GPR*, 12; *EPR*, 10), to make such claims about the "scientific" nature of his inquiry may seem rather unwonted; moreover, to take such methodological issues seriously may be dismissed as inconsequential, where what is taken to matter much more is the novelty of a work's *content*. So, while Hegel asks that his "treatise" should be "understood and judged" in terms of whether it is properly "logical" and "scientific" (*GPR*, 13; *EPR*, 10), he recognizes that contemporary thinkers may not think this is of much significance, where more weight is placed on whether or not the philosopher has something new to say: "It is true that we may hear it said by those who seem to adopt the most thorough approach that form is a purely external quality, indifferent to the matter [*Sache*] itself, which is alone of consequence; furthermore, the task of the writer, especially the philosophical writer, may be said to consist in the discovery of *truths*, the statement of *truths*, and the dissemination of *truths* and correct concepts" (*GPR*, 13; *EPR*, 10–11). As we shall see, Hegel believes that philosophy which focuses on "content" at the expense of "form" does so at its peril, in so far as "in science, the content is essentially inseparable from the *form*" (*GPR*, 13; *EPR*, 10).²¹

First, he argues that in practice these philosophers seldom do manage to offer any new "discoveries," so that it is rather empty to claim that what matters about their philosophy is its "content," as what we actually come to learn from them is rarely much different from what we knew already: "the same old brew is reheated again and again and served up to all and sundry" (*GPR*, 13; *EPR*, 11). The danger here, Hegel thinks, is that philosophers will be tempted to treat this "reheated brew" as if it really contained "new and unheard-of truths," and so claim for themselves qua philosophers a special kind of epistemic authority and importance "as if all that the world had hitherto lacked was these zealous disseminators of truths" (*GPR*, 13; *EPR*, 11). Second, Hegel argues that in the rush to present us with these fresh discoveries, such philosophers just add to the cacophony of competing views, while leaving us unable to settle on which of these views is really valid, because they lack a proper method: "And if, amidst this jumble of truths, there is something that is neither old nor new but enduring, how can it be extracted from these formlessly fluctuating reflections—how can it be distinguished and verified other than by *scientific* means?" (*GPR*, 13; *EPR*, 11).

Hegel observes, moreover, that if philosophy claims that what is distinctive about it is its content, rather than its method, it will face the difficulty of finding

²⁰ See also Hegel's draft letter to Hardenberg of October 1820, in which he writes that the central aim of the *Philosophy of Right* "is scientific treatment and theoretical form" (*Briefe von und an Hegel*, trans. Johannes Hoffmeister, 4 vols. [Hamburg: Felix Meiner, 1953], II, 241; *Hegel: The Letters*, trans., Clark Butler and Christiane Seiler [Bloomington: Indiana University Press, 1984], 459).

²¹ See also *GPR*, 27; *EPR*, 22: "For *form* in its concrete significance is reason as conceptual cognition [*begreifendes Erkennen*], and *content* is reason as the substantial essence of both ethical and natural actuality; the conscious identity of the two is the philosophical Idea."

that there may not be anything very new for it to propose that is not already part of our ordinary social and ethical thinking, and hence it will make itself appear redundant: "The *truth* concerning *right, ethics, and the state* is at any rate as old as its *exposition and promulgation* in *public law and in public morality and religion*" (GPR, 13–14; EPR, 11).²² Hegel thinks that this redundancy can be avoided only by once again accepting the importance of "form" or method, for then we need no longer present philosophy as if its value lies solely in the novelty of its content regarding truth in moral matters, as it is still possible for philosophy to make a significant contribution, "in as much as the thinking mind [*Geist*] is not content to possess it [i.e., this truth] in this proximate manner" (GPR, 14; EPR, 11). The difficulty the "thinking mind" faces, Hegel suggests, is that the truths of ordinary morality lack any proper methodological framework: what is needed is that they be given a philosophical treatment, "so that the content which is already rational in itself may also be given a rational form and thereby appear justified to free thinking" (GPR, 14; EPR, 11). How is it that this philosophical treatment will enable the truths of ordinary morality to appear justified to "free thinking"? Because, according to Hegel, "free thinking" demands that thought can *derive* those truths in a way that shows they are grounded within a self-supporting system,²³ rather than based on any sort of extra-systematic *given*, for only then can reason be satisfied and "know itself as united in its innermost being with the truth" (GPR, 14; EPR, 11).²⁴

Thus, Hegel argues, reason cannot be content with any treatment of these moral truths which attempts to base them on "the external positive authority of the state or of mutual agreement among human beings, or by the authority of inner feeling and the heart and by the testimony of the spirit which immediately concurs with this" (GPR, 14; EPR, 11), because all these modes of grounding are inadequate, as the further question remains of *why* the state supports this practice rather than that, or *why* people happen to agree on this rather than that, and so on. Using his method, Hegel suggests, such questions will not arise, as no such ungrounded presuppositions remain,²⁵ so that in this respect "free thinking" can be satisfied. This, for Hegel, is the distinctive contribution philosophy can make in this area.

²² See also Hegel, *Enzyklopädie Logik*, §22 *Zusatz*, 79; *Encyclopaedia Logic*, 55: "The business of philosophy consists only in bringing into consciousness explicitly what people have held to be valid about thought from time immemorial. Thus, philosophy establishes nothing new; what we have brought forth by our reflection here is what everyone already takes for granted without reflection."

²³ See also GPR, §2 *Zusatz*, 30–31; EPR, 26: "Philosophy forms a circle. It has an initial or immediate point—for it must begin somewhere—a point which is not demonstrated and is not a result. But the starting point of philosophy is immediately relative, for it must appear at another end-point as a result. Philosophy is a sequence which is not suspended in mid-air; it does not begin immediately, but is founded off within itself." See also Hegel, *Enzyklopädie Logik*, §15.

²⁴ For further helpful discussion of this aspect of Hegel's methodological position, and its rationale, see Stephen Houlgate, *Freedom, Truth and History: An Introduction to Hegel's Philosophy* (London: Routledge, 1991), 41–68. See also Richard Dien Winfield, *Reason and Justice* (Albany: SUNY Press, 1988) and *Overcoming Foundations: Studies in Systematic Philosophy* (New York: Columbia University Press, 1989); and William Maker, *Philosophy Without Foundations: Rethinking Hegel* (Albany: SUNY Press, 1994).

²⁵ Hegel allows, however, that the *Philosophy of Right* itself is not totally presuppositionless, as it takes for granted the preceding phases of the system of which it is part; but, he claims, taken in the context of that system, those presuppositions themselves are sufficiently grounded: see GPR, §2, 30; EPR, 26.

Against his critics, therefore, Hegel suggests that the form of a philosophical inquiry is not somehow irrelevant compared to its content, as even if philosophy does not go beyond ordinary morality in terms of its content, it is precisely by presenting its content in a "scientific" manner that philosophy can make its contribution to our ethical thinking, in showing that the content is not arbitrary, but can be given a systematic treatment that reveals its inner necessity; philosophy can therefore deepen our understanding of what makes certain positions valid, and thereby satisfy our need for rational insight, even where it cannot claim to be a special source of moral truths.

Now, it might be felt that my reading of this paragraph plays into the hands of the conservative interpretation of Hegel, and as such leaves his position open to criticism. In particular, it may seem to treat public morality as too static and homogeneous, and to give philosophy too passive a role in relation to that public morality, where philosophy ought not to give the latter any independent authority. However, with regard to the first point, nothing I have said about Hegel's position requires him to hold that public morality is completely unchanging and uncontested: indeed, Hegel himself frequently emphasized (in the *Phenomenology of Spirit* and elsewhere) that public morality can alter in different ways, and can be deeply contested. All Hegel is denying, in my view, is that the philosopher qua philosopher should take it as his primary role to guide this process.²⁶ Thus, his position is that while ethical change and development can occur, this can quite properly be brought about by changes in public morality *at large*, and not by the special inquiries of the philosopher. The danger in ranking "content" above "form" is that this will not be acknowledged, as the philosopher's only role is then to tell us how to think on these issues in a potentially disastrous way, based on a claim to authority that is spurious because it has no real methodological grounding, where, without this, "[o]ne bare assurance is worth just as much as another."²⁷

But, it might be felt (and this is the second objection), if the primary role of the philosopher is not to provide new "content" to our moral thinking, has not Hegel abandoned its essentially critical role, and so revealed the inherent conservatism of his position?²⁸ And, given that Hegel himself does seem to offer proposals for the reforms of at least some institutions in the *Philosophy of Right*, and so to that extent himself seems to allow himself qua philosopher to offer something by

²⁶ As Dudley Knowles has suggested recently (*Hegel and the Philosophy of Right* [London: Routledge, 2002], 70 and 346, n. 3), when Hegel famously says at the end of the Preface that "philosophy paints its grey in grey," he means that it gives us a kind of theoretical reflection on the essential elements of the social world, where this can only be done after the dust of day-to-day debate and social change has settled and "actuality has reached maturity," when "a shape of life has grown old, and it cannot be rejuvenated, but only recognized, by the grey in grey of philosophy; the owl of Minerva begins its flight only with the onset of dusk" (*GPR*, 28; *EPR*, 23). Philosophy is therefore necessarily limited in how far it can go in claiming to be able to change the world by "issuing instructions on how the world ought to be," because it cannot reflect on the social world from "outside," so that in this sense philosophy "comes too late" to tell us what we ought to do (*GPR*, 28; *EPR*, 23).

²⁷ Hegel, *Phänomenologie*, 71; *Phenomenology*, 49.

²⁸ See Haym, *Hegel und seine Zeit*, 366 (trans. 221): "Kant had once taught this science [of philosophical ethics] to fly higher; now returning from heaven to earth, it bears the mark of a more petty and fearful time. Face to face with reality [*Wirklichkeit*], temporal-human reality, idealism lays down its arms, believing itself able to maintain its honour and its name only in subordination to this reality."

way of new “content,” how can my reading of Hegel be correct? I am not sure these criticisms are as forceful as they seem. For, although Hegel as I read him objects to any purely “content” driven philosophy that lacks any concern for the rationalistic demands of a *Wissenschaft*, nothing we have seen so far in the Preface (nor, I will argue, in what is to come) suggests that philosophy cannot propose any institutional reforms at all—it just must do so based on a proper method, otherwise it will have the problematic status of merely subjective opinion.

Hegel now goes on to consider arguments designed to show that subjective opinions are all we can hope for in ethical and social matters, so there is nothing wrong with philosophy proceeding in this way. The first is that because opinions on moral matters are deeply divided, there is no “publicly recognized truth” here for us to follow; instead, we are faced by “the *infinite variety of opinions*,” so that we must abandon the attempt to arrive at anything that is “universally acknowledged and valid,” where “this perplexity may easily be taken for a just and genuine concern with the matter [*Sache*] itself” (*GPR*, 14; *EPR*, 11–12). Hegel responds, however, by arguing that this stress on the variety of moral thought is exaggerated and in bad faith:

But in fact, those who pride themselves on this perplexity are in the position of not being able to see the wood for the trees, and the only perplexity and difficulty that is present is one they themselves have created; indeed, this perplexity and difficulty is rather a proof that they want something other than what is universally acknowledged and valid, something other than the substance of the right and the ethical. (*GPR*, 14; *EPR*, 12)

The second objection Hegel considers at this point centers on the idea that freedom consists in thinking for oneself about moral and political matters, where it is claimed that this means that “the only criterion of thought and the only way in which thought can know itself to be free is the extent to which it *diverges from what is universally acknowledged and valid* and manages to invent something *particular for itself*” (*GPR*, 15; *EPR*, 12). The result of this approach, Hegel argues, is that “it might seem to be the essential task of a philosophy of the state to invent and propound *yet another theory*, and specifically a new and particular theory,” in so far as “freedom of thought, and of spirit in general, can be demonstrated only by divergence from, and even hostility towards, what is publicly acknowledged” (*GPR*, 15; *EPR*, 12). The position Hegel is considering, then, argues from “the freedom of thought,” to the claim that a work is not genuinely philosophical unless its conclusions differ from all existing practices.

Hegel responds to this objection by arguing that it rests on a misconception regarding the nature of “the freedom of thought.” On the one hand, Hegel happily accepts that the right to think for oneself is “exalted” and “divine” (*GPR*, 15; *EPR*, 12; cf. *GPR*, 26–27; *EPR*, 22), and that in the modern world “in laws of right...the thing [*Sache*] is not valid because it exists; on the contrary, everyone demands that it should match his own criterion” (*GPR*, 16 *Zusatz*; *EPR*, 13 *Addition*). On the other hand, however, Hegel holds that this does *not* entail that thinking for oneself requires that we “imagine that no state or constitution had ever previously existed or were in existence today, but that we had *now* (and this ‘now’ is of indefinite duration) to start right from the beginning, and that the ethical

world had been waiting only for such intellectual constructions, discoveries, and proofs as are *now* available" (GPR, 15; EPR, 12). Hegel points out that no one would think that this is the right procedure with respect to the natural world, and yet no one thinks that here our "freedom of thought" is compromised. This is because, Hegel suggests, in the case of the natural world we expect to find some convergence on some objective truth, but "[t]he spiritual universe is supposed rather to be at the mercy of contingency and arbitrariness, to be *god-forsaken*, so that, according to this atheism of the ethical world, *truth* lies *outside* it, and at the same time, since reason is nevertheless *also* supposed to be present in it, truth is nothing but a problem" (GPR, 15–16; EPR, 14). The result, then, is that "freedom of thought" in moral and political issues is seen as a purely subjective matter, so that on this view no common ground on these issues is expected or required: "But, we are told, this very circumstance justifies, indeed obliges, every thinker to take his own initiative, though not *in search of* the philosopher's stone, for this search is made superfluous by the philosophizing of our times and everyone, whatever his condition, can be assured that he has this stone in his grasp" (GPR, 16; EPR, 14).

Hegel argues that the danger in the model he is criticizing is that the general public will be suspicious of philosophers who thereby attempt to alter our practices radically, because those people who are broadly happy with the current arrangements will "laugh at such initiatives and assurances and regard them as an empty game, now more amusing, now more serious, now pleasing, now dangerous" (GPR, 16–17; EPR, 14). Hegel says that the "restless activity of vain reflection" adopted by philosophy, "along with the reception and response it encounters" from the general public would not matter very much "were it not that *philosophy* in general has incurred all kinds of contempt and discredit as a result of such behavior"; and, whereas previously philosophizing involved the difficult intellectual challenge of making us think about things in a rational manner, it now just involves a kind of empty moralizing, in such a way that everyone can claim to be "a philosopher," as this is something that involves no great difficulty: "No other art or science is treated with this ultimate degree of contempt, namely the assumption that one can master it straightaway" (GPR, 17; EPR, 14–15, translation modified).

Hegel therefore argues that, because of the view of philosophy he is criticizing, it has become subjectivist, as philosophers turn to inward feeling to justify the view of the state they are putting forward: "In any case, this self-styled philosophy has expressly stated that *truth cannot be arrived at by cognition* [erkennt], but that truth consists in what *wells up from each individual's heart, emotion, and enthusiasm* in relation to ethical subjects, particularly in relation to the state, government, and constitution" (GPR, 18; EPR, 15, translation modified). Hegel argues (attacking Fries in particular) that the result has been various unworkable political proposals (which "reduce this refined [*gebildeten*] structure [of the state] to a mush of 'heart, friendship, and enthusiasm'" [GPR, 19; EPR, 16]). For Hegel, therefore, this mistaken conception of philosophy has come to betray the rationalistic principles that must underlie all responsible forms of inquiry, and thus the fundamental method of philosophy itself, so that in the end it becomes a form of anti-philosophy, in which "all the trouble involved in rational insight and cognition, guided

by the thinking concept" is avoided (*GPR*, 19; *EPR*, 16). Hegel argues that this anti-rationalism leads contemporary philosophy to oppose the very idea of *laws* in ethics and social life at all, insofar as laws are universal and therefore have the form of rationality:

That right and ethics, and the actual world of right and the ethical, are grasped by means of *thoughts* and give themselves the form of rationality—namely universality and determinacy—by means of thoughts, is what constitutes *the law*, and it is this which is justifiably regarded as the main enemy by that feeling which reserves the right to do as it pleases, by that conscience which identifies right with subjective conviction. (*GPR*, 20; *EPR*, 17)

Given his view that "arbitrary sophistry has usurped the name of *philosophy*" (*GPR*, 20; *EPR*, 17), Hegel expresses himself in sympathy with those who "grow impatient as soon as they hear talk of a philosophical science of the state" (*GPR*, 20–21; *EPR*, 17), for as it is currently practiced, such a science could only lead to "superficiality" (*Seichtigkeit*) (*GPR*, 20; *EPR*, 16). He also says he can see why political authorities have become concerned by such philosophizing, insofar as it sets itself up in judgement on all existing values, in a way that can "lead to the destruction of inner ethics and the upright conscience, of love and right among private persons, as well as the destruction of public order and the laws of the state" (*GPR*, 22; *EPR*, 18). Moreover, Hegel accepts that it is understandable why other academic disciplines therefore think they have no need to take philosophy seriously, so that "in so many publications in the field of the positive sciences, as well as in works of religious edification and vague literature of other kinds, the reader encounters...contempt for philosophy" (*GPR*, 22; *EPR*, 18, translation modified). But, Hegel warns, although "[t]he declamations and presumptuous outbursts against philosophy which are so common in our time" are "in the right, by virtue of that superficiality to which philosophical science has been degraded" (*GPR*, 23; *EPR*, 19), the result is that by forsaking philosophy, these other academic disciplines have lost their intellectual direction, so that "all objects, however barren and particular [*partikular*], and all materials, however arid, are accorded the same status as what constitutes the interest of all thinking people and the bonds of the ethical world" (*GPR*, 23; *EPR*, 19).

Faced with this highly regrettable state of affairs, Hegel sees it as a "stroke of *good fortune* for science" (*GPR*, 23; *EPR*, 19) that the "*public split*" (*GPR*, 24; *EPR*, 20) between the philosophers he is criticizing and the political authorities who see them as socially dangerous has brought to a head the question: what is the proper nature of philosophy as a form of inquiry? Hegel clearly has considerable sympathy with those who have come to doubt the value of philosophy as it is currently practiced, because philosophy of this sort seems to have nothing to do with the real world in coming up with empty utopian proposals for reform. Hegel wants to claim, however, that this is not the fault of philosophy *per se*, but of philosophy that is anti-rationalistic in its methods. Hegel insists that once this rationalism is restored to its rightful place, then philosophy will no longer be empty utopian, and so will no longer be subject to this criticism:

It is *this very relation of philosophy to actuality* which is the subject of misunderstandings, and I accordingly come back to my earlier observation that, since philosophy is the

exploration of the rational, it is for that very reason the *comprehension of the present and the actual*, not the setting up of a *world beyond* which exists God knows where—or rather, of which we can very well say that we know where it exists, namely in the errors of a one-sided and empty ratiocination. (*GPR*, 24; *EPR*, 20)

Hegel thinks it is as “the *comprehension of the present and the actual*” that philosophy will regain its relevance to contemporary political thought, rather than through utopian speculation about “a *world beyond*”; and, as we have seen, he believes it has fallen into the latter because it has abandoned reason as its method of inquiry, in favour of “the subjective contingency of opinion and arbitrariness” (*GPR*, 19; *EPR*, 16). By returning to “the *exploration of the rational*,” therefore, Hegel hopes to show that philosophy can make a relevant contribution to the political world as it really is, not to what many people would see as merely idle theorizing. In a dense passage (*GPR*, 24; *EPR*, 20) he claims that even Plato—who may seem in his *Republic* to have offered a merely “*empty ideal*” not unlike that of the philosophers Hegel is criticizing, while clearly being a philosopher whom Hegel would want to classify as a rationalist—was in fact concretely related to the ethical life of his time, so that his rationalism was not a form of utopianism, and so is not a counterexample to Hegel’s position.

It is at this point in the Preface that Hegel introduces his *Doppelsatz*.²⁹ We should therefore briefly recall the context in which it occurs. As we have seen, a central feature of that context is Hegel’s concern for philosophy as an intellectual discipline, and the low regard in which it is currently held. His explanation for this crisis is that philosophy no longer takes systematic inquiry to be important, because the rules of such inquiry “have been cast aside, as if they were simply fetters, to make way for the arbitrary pronouncements of the heart, of fantasy, and of contingent intuition” (*GPR*, 12; *EPR*, 10).³⁰ The result, Hegel thinks, is that philosophers now hold forth on ethical and social issues, but without having earned the right to do so, by thinking about these issues systematically. This is because such philosophers do not think “scientific study” of the ethical world is possible,

²⁹ In his *Lectures on the History of Philosophy*, Hegel also makes the remark that “what is actual, is rational” in the context of a discussion of Plato, where as in the *Philosophy of Right*, Hegel proposes that he should be seen, not as a utopian idealist, but as a rational inquirer into Greek ethical life who “shows how traditional morality [*das Sittliche*] has a living movement in itself; he demonstrates its function, its inward organism” (G. W. F. Hegel, *Vorlesungen über die Geschichte der Philosophie II*, in *Theorie Werkausgabe* XIX, 110 and 115; *Lectures on the History of Philosophy*, trans. E. S. Haldane, 3 vols., repr. [Lincoln and London: University of Nebraska Press, 1995], II, 95 and 100). Plato thus gives rational form to traditional morality, and so “portrays the substance of ethical life in its ideal *beauty and truth*” (*GPR*, §185, 342; *EPR*, 222). In this sense (Hegel thinks) Plato recognizes that “what is actual, is rational,” and can be given philosophical treatment, even though to us that treatment may appear utopian because we cannot see how the state he proposes could be realized *now*, given modern sensibilities concerning individual freedom. However, at the time it was written, Hegel suggests, the *Republic* was not a “chimera,” but a philosophical investigation into the fundamental nature of Greek ethical life, and “the truth of the world [Plato] lived in” (*Vorlesungen über die Geschichte der Philosophie II*, 111; *Lectures on the History of Philosophy*, II, 96).

³⁰ See also *GPR*, §2, 32; *EPR*, 27: “But if, on the other hand, the former manner of cognition with its formal definitions, inferences, proofs, and the like has now virtually disappeared, the other mode which has replaced it is a bad substitute: that is, Ideas in general, and hence also the Idea of right and its further determinations, are taken up and asserted in immediate fashion as *facts of consciousness*, and our natural and intensified feelings, our *own heart and enthusiasm*, are made the source of right. If this is the most convenient method of all, it is also the least philosophical.”

because they think that here (as against the natural world) "all the trouble involved in rational insight and cognition, guided by the thinking concept, can...be avoided" (*GPR*, 19; *EPR*, 16).³¹

Thus, when Hegel comes to write, in the *Doppelsatz*, that

Was vernünftig ist, das ist wirklich;
und was wirklich ist, das ist vernünftig

the context in which it is said I think shows it should be read in a certain way, as claiming that as a *rational* enterprise, philosophy can and will engage with "the actual" and "the present," rather than some "beyond." As we have seen, Hegel's purpose in making this claim is to answer those critics of philosophy who see it as little more than empty theorizing, while attacking those who think this is what philosophy *should* be. Against the latter, as we have discussed, he argues that this puts philosophy in a "vain position" (*GPR*, 25; *EPR*, 20), in the sense both of being futile, and of claiming unwarranted superiority to ordinary moral thinking. Against the former, he argues that there are no grounds to think that the results of a rational inquiry will be empty in this way, insofar as inquiry into both the natural and spiritual universe tells us about structures inherent in the world, and not just ideas in our heads: "Conversely, if the *Idea* is seen as 'only an idea,' a representation [*Vorstellung*] in the realm of opinion, philosophy affords the opposite insight that nothing is actual except the *Idea*" (*GPR*, 25; *EPR*, 20).³² Conducted in the right rationalistic manner, therefore, there is nothing utopian about philosophy, and so nothing idle about it either.

In the remainder of the Preface, Hegel goes on to underline the way in which "[a]s a philosophical composition," the *Philosophy of Right* "must distance itself as far as possible from the obligation to construct a state *as it ought to be*" (*GPR*, 26; *EPR*, 21), for if a theory allows itself to become utopian and so "builds itself a world *as it ought to be*, then it certainly has an existence, but only within [a person's] opinion—a pliant medium in which the imagination can construct anything it pleases" (*GPR*, 26; *EPR*, 22). Hegel suggests that because it attempts "to comprehend and portray the state" in rational terms, this will be avoided in what follows. Philosophy therefore brings us back to the real world, rather than taking us beyond it, as critics have supposed on the evidence of those who have philosophized without recognizing the inner call "to comprehend" (*zu begreifen*), or to think in properly conceptual terms (*GPR*, 27; *EPR*, 22); on my reading, this is what the *Doppelsatz* also claims.

³¹ Hegel makes clear the dangers he sees in such irrationalism by (mis)quoting Goethe's *Faust* (*GPR*, 19; *EPR*, 16): "Do but despise reason and science / The highest of all human gifts— / Then you have surrendered to the devil / And must surely perish."

³² See Hegel, *Enzyklopädie Logik*, §41 Zusatz 2, 116; *Encyclopaedia Logic*, 83: "thoughts are not merely our thoughts, but at the same time the *In-itself* of things and whatever else is objective." And see G. W. F. Hegel, *Die Philosophie des Rechts: Vorlesung von 1821/22*, ed. Hansgeorg Hoppe (Frankfurt: Suhrkamp, 2005), 37: "[Philosophie] hat nicht die äußere Existenz der Gegenstände zu betrachten ... sondern nur die ewige, innere Idee der Sache an und für sich selbst. Diese Idee verdient allein den Namen der Wirklichkeit; sie ist nicht so etwas, wie man zu sagen pflegt, das bloße Idee sei. Sie ist nicht Theorie, so etwas, das nur sein soll, nicht etwas Ohnmächtiges, sie *ist* im intensivsten Sinne des Seins."

It might be wondered what grounds Hegel has for thinking this will be so: what grounds does Hegel have for believing that if it is rationally conducted, philosophy will avoid empty utopianism? This is a large question, and only a brief suggestion can be made here of how to answer it. First, Hegel has *epistemic* grounds: rational inquiry involves *convergence*, rather than merely subjective opinion, so others will share its conclusions in a way that makes it realizable. Second, Hegel has *historical* grounds, in the sense that he believes that reason has already shaped the ways in which we have come to live, so that in following reason, philosophy will be going with the grain of social institutions as they have arisen.³³ Thirdly, he has *metaphysical* grounds, in that he believes that the world is structured in a way that is fundamentally intelligible to reason.³⁴ And fourthly, as we have seen, Hegel believes that once philosophers see that the best contribution philosophy can make to “free thinking” comes through its systematic method, they will be less inclined to think philosophy is only worth taking seriously if it “manages to invent something *particular* for itself” (*GPR*, 15; *EPR*, 12).

I have argued that Hegel's aim in the *Doppelsatz*, then, was to offer a slogan designed to answer those disillusioned by the perceived emptiness of much of the social philosophy of his time, by underlining that Hegel's return to *reason* is also meant to be a return to a form of philosophizing that is engaged with “the actual.” Hegel is thus offering us a polemical defense of his rationalistic method, where the defense is that this will enable philosophy to avoid empty utopianism, and thus regain the respect in which it deserves to be held. The *Doppelsatz* can therefore be seen as an expression of Hegel's faith in a rationalistic conception of philosophy, rather than a claim about the normative status of “the actual,” *however* ‘the actual’ is understood. On this account, then, both the conservative *and* the progressive readings are mistaken; in linking the “rational” and the “actual” in this way, Hegel was not meaning to say anything about whether the “actual” is “right” or “good.”

4

Having outlined my neutral reading of the *Doppelsatz*, I now turn to consider certain objections to that reading.

(1) A first objection my reading must face is that I have focused exclusively on Hegel's use of the *Doppelsatz* in the Preface to the *Philosophy of Right*, but Hegel uses the *Doppelsatz* and variants of it elsewhere, and (it could be claimed) the ways in which it is employed elsewhere show that it is *not* meant to be neutral, but rather to support the progressive reading. Four such other uses might be men-

³³ See *GPR*, 19; *EPR*, 16, where Hegel argues against “attributing to *feeling* what reason and its understanding have laboured to produce over several thousand years.”

³⁴ See Hegel, *Enzyklopädie Logik*, §24 Zusatz 1, 81–82; *Encyclopaedia Logic*, 56–57: “This meaning of thinking and of its determinations is more precisely expressed by the Ancients when they say that *nous* governs the world, or by our own saying that there is reason in the world, by which we mean that reason is the soul of the world, inhabits it, and is immanent in it, as its own, innermost nature, its universal . . . Just as thinking constitutes the substance of external things, so it is also the universal substance of what is spiritual.”

tioned: Hegel's comment on the *Doppelsatz* in the Introduction to the *Encyclopaedia Logic*; the variants he gives of it in the lectures on the *Philosophy of Right* from 1817/18 and 1819; and the variant offered in conversation with Heinrich Heine.³⁵ Let me consider each in turn.

Of these four cases, it is the first that has been most discussed by proponents of the progressive reading. For, it is here that Hegel underlines that for him 'actuality' is a technical term, and that this should be remembered in reading the *Doppelsatz*; and as we have seen, proponents of the progressive reading criticize proponents of the conservative readings for neglecting this fact. But, although Hegel does indeed here emphasize that "when I speak of actuality, one should, of course, think about the sense in which I use this expression,"³⁶ the question still remains from my point of view, whether in distinguishing "the actual" from "the existent," and identifying the former and not the latter with the rational, Hegel in so doing wants to draw a *normative* distinction between them, by claiming that the former is "right" or "good" in the way the latter is not. In fact, I will argue, Hegel's aim in drawing this distinction is still methodological, to suggest that while reason may make the "actual" intelligible and explicable, it may not be able to incorporate everything that is merely "existent" into a rational science; thus, on this account, Hegel's position remains normatively neutral.

In the *Encyclopaedia Logic*, Hegel's reference to the *Doppelsatz* again occurs in introductory material, and as we have learned to expect, a central concern of that material is with the status of philosophy and what is special about it as a form of inquiry. So, for example, Hegel claims that some think that philosophy is too hard and esoteric, because it seems unintelligible to them, while others think it is too easy, because they treat it as superficial;³⁷ and, in general, philosophy has a difficult time "placing" itself as distinctive with respect to other ways of thinking. Then, in §6, he turns to consider the *content* of philosophical knowledge, what it is philosophy inquires into. His answer is "the *world*, the outer and inner world of consciousness," immediately going on to say "in other words, the content of philosophy is *actuality*."³⁸ At first, Hegel observes, we come to know about the world through experience; but we then come to recognize that experience does not really get to the bottom of things, but is confined to the level of "*appearance*, [the] transient and insignificant [*bedeutungslos*],"³⁹ which we learn to distinguish from "that which truly and in itself merits the name of *actuality*,"⁴⁰ because (presumably) it is *not* so "transient and insignificant." Now, philosophy, Hegel argues, must be in accord with the world as "appearance" and as "actuality," so that its "universal touchstone" is how well it "fits the phenomena at the level of givenness," while its "supreme and ultimate purpose" is "to bring about the reconciliation of the

³⁵ Other variants and discussions that could be mentioned can be found in Hegel, *Die Philosophie des Rechts: Vorlesung von 1821/22*, e.g., 37 and 234. But I do not believe these raise any new difficulties, and can be handled in a way that is similar to the cases I deal with in what follows; I have therefore not given any extended separate discussion to this text.

³⁶ Hegel, *Enzyklopädie Logik*, §6, 48; *Encyclopaedia Logic*, 29.

³⁷ Hegel, *Enzyklopädie Logik* §5, 46; *Encyclopaedia Logic*, 28.

³⁸ Hegel, *Enzyklopädie Logik* §6, 47; *Encyclopaedia Logic*, 29.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

reason that is conscious of itself with the reason that *is*, or actuality, through the cognition of this accord."⁴¹

Hegel thus seems to be claiming that philosophy can find reason in the world by taking us further than the "transient and insignificant," putting us in touch with "actuality," but not in a way that takes us into any sort of transcendent "beyond," since this "actuality" must also be part of the world as it first appears in experience. Whereas that world seemed chaotic and structureless, it is now shown to have a rational order, so that reconciliation between us qua rational subjects ("the reason that is conscious of itself") and the world qua rational entity ("the reason that *is*") can be achieved. So far, therefore, the text of this paragraph reads like a fairly straightforward statement of Hegel's epistemological rationalism, according to which the world may initially present itself to us as a confused array of phenomena, which we then make intelligible using reason, to gain a sense of how the world contains certain necessary structures which give it order.⁴² For Hegel, it is this kind of rational insight that gives us as inquirers a particular kind of satisfaction in relation to the world, a sense of reconciliation with it, as it now no longer appears to be a disorderly mass of contingencies, but a well-ordered system.⁴³

It is at this point that Hegel makes reference to the *Doppelsatz*, in his "remark" to the main paragraph we have just considered. The normal function of these "remarks" is not to take the argument further forward, but to broaden out the discussion of the main paragraph somewhat, and in a slightly less compressed way. It is therefore natural, having introduced the idea of "actuality" in the main paragraph, and having offered his rationalistic conception of it in relation to philosophy, that Hegel should mention the *Doppelsatz*. But again, I think, this shows that the *Doppelsatz* itself should be understood in this rationalistic way.

⁴¹ Ibid.

⁴² See Hegel, *Enzyklopädie Logik*, §21 Zusatz, 77–78; *Encyclopaedia Logic*, 53, where Hegel suggests that this is the sort of insight we acquire when we find that nature behaves in a law-governed way, or when individuals fall under universal genera:

Nature offers us an infinite mass of singular shapes and appearances. We feel the need to bring unity into this manifold; therefore, we compare them and seek to [re]cognize what is universal in each of them. Individuals are born and pass away; in them their kind is what abides, what recurs in all of them; and it is only present for us when we think about them. This is where laws, e.g., the laws of the motion of heavenly bodies, belong too. We see the stars in one place today and in another tomorrow; this disorder is for the spirit something incongruous, and not to be trusted, since the spirit believes in an order, a simple, constant, and universal determination [of things]. This is the faith in which the spirit has directed its [reflective] thinking upon the phenomena, and has come to know their laws, establishing the motion of the heavenly bodies in a universal manner, so that every change of position can be determined and [re]cognised on the basis of this law.

⁴³ See G. W. F. Hegel, *Vorlesungen über die Philosophie der Geschichte*, in *Theorie Werkausgabe* XII, 521; *The Philosophy of History*, trans. J. Sibree, (New York: Dover, 1956), 439 (translation modified): "The human being is not free when he does not think, for then he relates himself to an other. This comprehension, the grasping of the other with the most inward self-certainty directly contains the reconciliation: the unity of thinking with the other is present *in itself*, since reason is just as much the substantial basis of consciousness as of what is external and natural. Thus the object is no longer a beyond with a different substantial nature."

Hegel observes that the “simple propositions” that make up the *Doppelsatz* “have seemed shocking to many and they have been attacked.”⁴⁴ Hegel does not tell us whom he has in mind here, but it is reasonable to assume that he has in view those who took him to be a political reactionary on the strength of the *Doppelsatz*.⁴⁵ But of course, even if this is the case, it does not follow (as the progressive reading claims) that Hegel is here responding to those critics by emphasising that it offers a normative endorsement not of the status quo, but of something more ideal. For, another way to respond to those who take it to be normatively conservative is just to show it is simply a philosophical platitude, rather than some sort of normative assessment of “the actual.” And this, I would argue, is the strategy Hegel does in fact adopt. For, Hegel expresses himself surprised that people have reacted to the *Doppelsatz* in a hostile way, and seen it as somehow outrageous, even though they think of themselves as committed to religion or philosophy: “These simple propositions...have been attacked, even by those who are not ready to renounce the possession of philosophy, and certainly not of religion.”⁴⁶ This suggests that the critics he has in mind are those who think of themselves as philosophers or religious people, but who think the *Doppelsatz* is problematic; but for Hegel, this position is incoherent, because he thinks that the *Doppelsatz* in fact forms the fundamental presupposition for religion and philosophy, and it is remarkable that those who attack it do not see that in fact they themselves must be committed to it.

What is that presupposition to which these critics must be committed? In religious terms, it is that there is “divine governance of the world,” and in philosophical terms it is “what is there is partly *appearance* and partly actuality.”⁴⁷ In other words, Hegel thinks that what is distinctive of any philosophical or religious way of thinking is a move he outlined in the main paragraph, which does not just accept that the world is nothing but contingency and appearance, but sees in it some sort of deeper explanation and grounding; so, Hegel thinks, to anyone with a religious or philosophical outlook, his “simple propositions” should seem unproblematic, since all they are claiming is that we can come to find that “actuality” is in accord with reason, in the sense of being open to systematic inquiry, in a way that “appearance” is not. Hegel therefore suggests that as long as the religious person thinks that behind the world there is a divine order, or the philosopher accepts that there is more to the world than transient phenomena, he or she should find nothing outrageous in the “simple propositions” of the *Doppelsatz*. But this is not because these propositions are in fact meant progressively rather than conservatively, but because they summarize a basic metaphysical assumption common to all religious and philosophical thought (as Hegel conceives them).

Hegel then goes on to suggest that this religious or philosophical way of drawing a distinction between “appearance” and “actuality,” treating the latter only as “rational” is in fact also a part of ordinary thinking. For, although “[i]n common life” people may not seem to draw this distinction, because they “call every brain wave, error, evil, and suchlike ‘actuality’ as well as every existence, however wilted

⁴⁴ Hegel, *Enzyklopädie Logik*, §6, 47; *Encyclopaedia Logic*, 29.

⁴⁵ See Terry Pinkard, *Hegel: A Biography* (Cambridge: Cambridge University Press, 2000), 458–59.

⁴⁶ Hegel, *Enzyklopädie Logik*, §6, 47; *Encyclopaedia Logic*, 29.

⁴⁷ *Ibid.*

[*verkümmerte*] and transient it may be," after a little thought "even for our ordinary feeling, a contingent existence does not deserve to be called something-actual in the emphatic sense of the word; what contingently exists has no greater value than that which something-possible has; it is an existence itself which (although it is) can just as well *not be*."⁴⁸ Now, Hegel does here mention one normative category, that of evil, in relation to what is not actual. But I believe the overwhelming force of the full statement is not to mark a normative distinction between, on the one hand, "things that 'live up to their own underlying norm or end,'"⁴⁹ and thus that are as they ought to be (the actual), and, on the other hand, those that do not, and hence are not as they ought to be (the existent). Rather, it is to make a more purely metaphysical distinction, between the contingency and transitoriness of the merely existent on the one hand, and the more necessary and permanent qua actual on the other (where Hegel seems just to mention evil here as one example of what is contingent and transitory in this way, in the sense that it could have not existed).⁵⁰ So, in saying that "what is rational, is actual, and what is actual, is rational," Hegel does not seem to be claiming rationality of what is "as it ought to be" as against what merely exists, but of what is in some sense fundamental as against what is merely apparent; he therefore seems to be making an epistemological rather than a normative point, that rational comprehension is to be found in the actual, rather than in appearances, where these are too contingent and transitory to be incorporated fully within a rational system of inquiry.⁵¹

⁴⁸ Ibid.

⁴⁹ Hardimon, *Hegel's Social Philosophy*, 56.

⁵⁰ Cf. Hegel, *Vorlesungen über die Geschichte der Philosophie II*, 111; *Lectures on the History of Philosophy*, II: 95–96, where Hegel mentions "evil" alongside "an external existence [*Dasein*], which displays arbitrariness and contingency, such as a tree, a house, a plant," and where he observes "in common life all is real [*wirklich*], but there is a difference between the phenomenal world and reality," on the grounds that the former is "arbitrary and contingent" and the latter is not.

⁵¹ In relation to the *Philosophy of Right*, Hegel makes this point about some of the questions that might arise about some of the less significant aspects of social life:

For what matters is to recognize in the semblance of the temporal and transient the substance which is immanent and the eternal which is present. For since the rational, which is synonymous with the Idea, becomes actual by entering into external existence [*Existenz*], it emerges in an infinite wealth of forms, appearances, and shapes and surrounds its core with a brightly coloured covering in which consciousness at first resides, but which only the concept can penetrate in order to find the inner pulse, and detect its continued beat even within external shapes. But the infinitely varied circumstances which take shape within this externality as the essence manifests itself within it, this infinite material and its organization, are not the subject-matter of philosophy. To deal with them would be to interfere in things [*Dinge*] with which philosophy has no concern, and it can save itself the trouble of giving good advice on the subject. Plato could well have refrained from recommending nurses never to stand still with children but to keep rocking them in their arms; and Fichte likewise need not have perfected his *passport regulations* to the point of 'constructing,' as the expression ran, the requirement that the passports of suspect persons should carry not only their personal description but also their painted likeness. In deliberations of this kind, no trace of philosophy remains. (*GPR*, 25; *EPR*, 20–21)

See also G. W. F. Hegel, *Vorlesungen über die Ästhetik I*, in *Theorie Werkausgabe XIII*, 19; *Aesthetics: Lectures on Fine Art*, trans. T. M. Knox, 2 vols. (Oxford: Oxford University Press, 1975), I, 6, where Hegel considers the objection (which he rejects) that art is not a suitable topic for scientific inquiry, because it is nothing more than a "mass of details," lacking in any necessary principles: "science is occupied with what is inherently *necessary* . . . But in the sphere of the spirit in general, especially in the imagination, what seems, in comparison with nature, to be peculiarly at home is caprice and the absence of law, and this is automatically incapable of any scientific explanation."

In the next sentence, Hegel stresses that understanding the proper meaning of the *Doppelsatz* requires grasping the notion of "actuality" he has developed elsewhere, in the *Science of Logic*.

But when I speak of actuality, one should, of course, think about the sense in which I use this expression, given the fact that I dealt with actuality too in a quite elaborate *Logic*, and I distinguish it quite clearly and directly, not just from what is contingent, even though it has existence too, but also, more precisely, from being there [*Dasein*], from existence, and from other determinations.⁵²

As we have seen, proponents of the progressive reading have followed Hegel's lead, which has taken them to remarks of this sort: "Actuality is the *unity of essence and Existence*."⁵³ They have then put this sort of remark together with comments by Hegel that suggest that something is good only if it properly realizes its nature,⁵⁴ and have concluded from this that Hegel's aim here was to circumscribe the normative force of the *Doppelsatz*, in making clear that he only meant to endorse "the actual," not the merely existent.⁵⁵

Now, two things should perhaps give us pause straightaway. The first is that in reminding us here that he has discussed "actuality" as a category in the *Logic*, Hegel contrasts it not *just* with "existence," but with all the other "determinations" discussed in the *Logic* up to that point. It thus seems too narrow to suggest that the contrast he wants to draw is based merely on how these two categories correspond to the category of essence. The second worry is that when Hegel does want to draw a contrast between something that properly realizes its nature and something that does not, he normally characterizes the former as "true" rather than "actual," as in the following passage:

In the philosophical sense... "truth," expressed abstractly and in general, means the agreement of a content with itself... [This] (philosophical) meaning of "truth" is also partly found in ordinary linguistic usage already. We speak, for instance, of a "true" friend, and by that we understand one whose way of acting conforms with the concept of friendship; and in the same way we speak also of a "true" work of art. To

⁵² Hegel, *Enzyklopädie Logik*, §6, 48; *Encyclopaedia Logic*, 29–30.

⁵³ G. W. F. Hegel, *Wissenschaft der Logik II*, in *Theorie Werkausgabe VI*, 186; *The Science of Logic*, trans. A. V. Miller, (London: George Allen & Unwin, 1969), 529.

⁵⁴ Cf. Hegel, *Enzyklopädie Logik*, §171 Zusatz, 322; *Encyclopaedia Logic*, 249: "[T]o say of a work of art that it is beautiful, or an action that it is good, the objects in question must be compared to what they ought to be, i.e., with their concept."

⁵⁵ See, for example, Avineri, *Hegel's Theory of the Modern State*, 127:

Hegel became aware quite clearly that by its sheer force, his epigram was apt to lead him into being very clearly misrepresented. Hence in a lengthy footnote in the 1830 edition of his *Encyclopedia of Philosophical Sciences*, he makes it a point to emphasize that actuality (*Wirklichkeit*) is not identical with all that exists. Hegel distinguishes here between *Dasein* (Existence) and *Wirklichkeit*. *Dasein* encompasses everything which exists, whereas *Wirklichkeit* is only that part of *Dasein* in which essence and existence coincide, and it is because of this that one can say that it is rational. Whatever the philosophical difficulties which arise out of this explanation (they seem to make the couplet into something like a tautology), it clearly indicates that Hegel himself did not intend in any way whatsoever to mean it as an overall legitimization of everything which exists.

Other commentators, who are rightly more careful than Avineri at distinguishing *Dasein* from *Existenz* usually make the latter the central contrast with *Wirklichkeit*; however, the overall strategy is the same.

say of something that it is "untrue" is as much as to say that it is bad, that it involves an inner inadequacy. A bad State, in this sense, is an "untrue" State; and what is bad and untrue consists always in a contradiction between an object's determination or concept and its existence.⁵⁶

Thus, if Hegel is saying what the progressive reading thinks he is in the *Doppelsatz*, he should perhaps more properly have said "what is rational, is true; and what is true, is rational."⁵⁷

More significantly, perhaps, when one looks at the way proponents of progressive readings of the *Doppelsatz* have taken Hegel's account of "actuality" in the *Logic*, it seems that they have misunderstood what he means by saying that "Actuality is the unity of essence and Existence." As we have seen, they take Hegel to be saying that something is actual when it is an existent thing which properly realizes its essence, and so is a "unity of essence and Existence" in this sense. But, when Hegel says in the *Logic* that a category is the unity of two preceding categories, he simply means that we have reached a category that combines elements of each. So, for example, he says that "measure" is "the unity of quality and quantity,"⁵⁸ by which he means that it involves aspects of both qualitative and quantitative determination, whereby quantity effects quality (for example, losing a certain number of hairs makes someone bald who was previously hirsute). Likewise, I would argue, when Hegel says that "Actuality is the unity of essence and Existence," he means that it is the kind of category which involves aspects of "essence" and "existence." What might Hegel mean by this? The category of existence, Hegel has argued, characterizes things which have their grounding in other things, and so need to be explained through the determination of what is outside them. With the category of essence, by contrast, entities are seen as determined by a nature that belongs to them, but which is hidden and mysterious. So, to say that the category of actuality is the unity of these preceding categories is to say that something is actual insofar as we have an explanation for it (as with what exists), but where what does the explaining is the nature of the entity itself (as when we think in terms of essences), *not* some external thing which determines it, although here the determination is transparent rather than hidden (as with existence but not

⁵⁶ Hegel, *Enzyklopädie Logik* §24 Zusatz 2, 86; *Encyclopaedia Logic*, 60. See also *Enzyklopädie Logik*, §172 Zusatz, 323–24; *Encyclopaedia Logic*, 249–50; and *Enzyklopädie Logik* §213 Zusatz, 369–70; *Encyclopaedia Logic*, 287–88; and *GPR*, §21 Zusatz, 73–74; *EPR*, 53. For further discussion see Robert Stern, "Did Hegel Hold an Identity Theory of Truth?," *Mind* 102 (1993): 645–47.

⁵⁷ I have found only two examples where Hegel uses a term other than 'true' to characterize something that properly realizes its nature. The first is Hegel, *Enzyklopädie Logik* §91, Zusatz, 196; *Encyclopaedia Logic*, 147–48; but even here Hegel does not characterise it as "actual" (*wirklich*), but as "real" (*reelle*): "[W]e often speak of 'reality' in still another sense, understanding by it that which behaves in accordance with its essential determination or its concept. For example, someone may say: 'This is a real occupation,' or: 'This is a real person.' Here it is not a question of what is immediately and externally there, but rather the correspondence between what is there and its concept." The second example is *Vorlesungen über die Ästhetik I*, 151; *Lectures on Aesthetics*, I, 111, where again Hegel uses the terminology of *Realität* rather than *Wirklichkeit*: "Thus it is only the reality which is adequate to the Concept which is the true reality [*Realität*], true indeed because in it the Idea brings itself into existence."

⁵⁸ Hegel, *Enzyklopädie Logik*, §107, Zusatz, 224; *Encyclopedia Logic*, 170. See also Hegel, *Wissenschaft der Logik I*, in *Theorie Werkausgabe*, V, 387; *Science of Logic*, 327: "Abstractly expressed, in measure quality and quantity are united."

essence). Thus, something is “actual” for Hegel if it is a self-maintaining system which can be understood in its own terms, without being seen as grounded in something else:

Real actuality *as such* is in the first instance the thing of many properties, the existent world; but it is not the Existence that resolves itself into Appearance, but, as actuality, it is at the same time the in-itself and reflection-into-self; it preserves itself in the manifoldness of mere Existence; its externality is an inner relationship *to itself* alone. What is actual *can act*; something manifests its actuality through that which it produces. Its relationship to another something is the manifestation *of itself*; neither a transition—the relation between something and an other in the sphere of being—nor an appearing—where the thing is only in relation to others and, though a self-subsistent, has its reflection-into-self, its determinate essentiality, in another self-subsistent.⁵⁹

It seems, then, that Hegel characterizes “actuality” as “the unity of essence and Existence” because he thinks it involves elements of both categories, not because “the actual” is an existent thing that is as it ought to be, which is what the normative reading of the *Doppelsatz* assumes.

As evidence that the normative reading of Hegel’s view of “actuality” goes awry, consider the following passage from the *Philosophy of Right*:

The state is actual, and its actuality consists in the fact that the interest of the whole realizes itself through the particular ends. Actuality is always the unity of universality and particularity, the resolution of universality into particularity; the latter then appears to be self-sufficient, although it is sustained and supported only by the whole. If this unity is not present, nothing can be *actual*, even if it may be assumed to have *existence* [*Existenz*]. A bad state is one that merely exists; a sick body also exists, but it has no true reality. A hand which has been cut off still looks like a hand and exists, but it has no actuality. True actuality is necessity: what is actual is necessary in itself. Necessity consists [*besteht*] in the division of the whole into the distinctions within the concept, and in the fact that this divided whole exhibits a fixed and enduring determinacy which is not dead and unchanging but continues to produce itself in its dissolution. (*GPR*, §270 *Zusatz*, 428–29; *EPR*, 302)

Hegel is here telling us why as an institution, the state deserves to be called “actual,” where the answer is that it is a self-maintaining and complex system, a coincidence of parts with the whole that enables it to persist through change; and a

⁵⁹ Hegel, *Wissenschaft der Logik II*, 208; *Science of Logic*, 546–47. See also *Enzyklopädie Logik*, §142, 279–80; *Encyclopaedia Logic*, 213–14, where Hegel says that, “The actual . . . is exempted from *passing-over* and its *externality* is its energy; in that externality it is inwardly reflected; its being-there is only the *manifestation of itself*, not of an other.” Josiah Royce provides a helpful gloss on Hegel’s conception of “actuality” along these lines in his article “Hegel’s Terminology,” in *Dictionary of Philosophy and Psychology*, ed. J. M. Baldwin, 3 vols. (New York: Macmillan, 1925), I, 462:

Wirklichkeit is a still higher category [than *Existenz*]. What has *Existenz* is a relatively immediate fact, but appears as the result of conditions, and as related to an environment. But what has *Wirklichkeit* not only has a basis, or is explicitly the expression of a principle, but contains this basis within itself, so that it is relatively (in the complete case wholly) independent of any environment. It is, then, a higher instance both of *Fürsichsein* [being-for-itself] and of *An-und-fürsichsein* [being-in-and-for-itself]. If a physical thing with qualities has *Existenz*, an organism, a commonwealth, a solar system, or any such relative *totality* (*Totalität*), possesses *Wirklichkeit*. In the most genuine sense, only the absolute would be *wirklich*, but the term is often employed for finite but relatively organic beings.

state is no longer actual but merely exists when it loses this capacity to "produce itself in its dissolution," through the breakdown of the whole into merely externally related parts (as when a body becomes sick and can no longer maintain itself, or a hand is removed from an arm). Thus, when Hegel says in the *Encyclopedia Logic* §6 that it is only the actual that is rational, and not what is merely existent, he would appear to be differentiating certain kinds of entities (such as states and bodies) from others (such as tables and pens), rather than differentiating "things that are as they ought to be" from "things that are not."

However, if Hegel thinks that "Actuality is the unity of essence and Existence" in the sense I have suggested, what is the connection between this and reason, as laid down in the *Doppelsatz*? As we have seen, proponents of the progressive reading argue that something is actual if it properly realizes its essence; if it properly realizes its essence it is good; and if it is good it is rational (in this normative sense). But I have argued that this is based on a mistaken view of Hegel's conception of "actuality"; and yet, it might be felt, my preferred view leaves the link with "reason" obscure.

To see that this is not so, consider another passage from the *Philosophy of Right* that comes shortly after the one we have just discussed:

The constitution [of a state] is rational in so far as the state *differentiates* and determines its activity within itself *in accordance with the nature of the concept*. It does so in such a way that *each* of the *powers* in question is in itself the *totality*, since each contains the other moments and has them active within it, and since all of them, as expressions of the differentiation [*Unterschied*] of the concept, remain wholly within its ideality and constitute nothing but *a single individual* whole.

In recent times, we have heard an endless amount of empty talk both about the constitution and about reason itself. The most vapid of this has come from those in Germany who have persuaded themselves that they have a better understanding than anyone else—especially governments—of what a constitution is, and who believe that all their superficialities are irrefutably justified because they are allegedly based on religion and piety. It is no wonder that such talk has made reasonable men [*Männer*] sick of the words 'reason,' 'enlightenment,' 'right,' etc., and likewise of the words 'constitution' and 'freedom,' and that one is almost ashamed to enter into further discussion of political constitutions. But it may at least be hoped that such excesses will lead to a more widespread conviction that philosophical *cognition* of such subjects cannot come from ratiocination or from [the consideration of] ends, grounds, and utilities—let alone from emotionality, love, and enthusiasm—but only from the concept; and it is also to be hoped that those who believe that the divine is incomprehensible and that cognition of the truth is a futile [*nichtiges*] enterprise will take no further part in the discussion. At any rate, neither the undigested chatter nor the edifying sentiments which their emotions and enthusiasm generate can claim to merit the attention of philosophy. (*GPR*, §272, 432–33; *EPR*, 305–6)

Here, clearly, Hegel is returning to some of the themes and targets of the Preface, arguing again that reason is required in order to determine the nature of the constitution of a state, and not "emotionality, love, and enthusiasm," where because the latter have taken over in philosophy "reasonable men" have despaired of the subject (see *GPR*, 17–19; *EPR*, 15–16). But now Hegel can be seen as providing grounds for holding that because the state is something "actual," this anti-rationalism is such a mistake: for, insofar as it is actual, the state is a unified system of elements, which can be properly understood only in terms of "the concept"

(*der Begriff*) which reason alone is capable of grasping. The state, then, is suitable for rational investigation, insofar as it is actual; and it is actual insofar as it is open to rational investigation, in precisely the way the *Doppelsatz* claims. Thus, I would argue, Hegel's aim in this section of the *Encyclopaedia* is not to circumscribe his normative endorsement of things to what is "actual" rather than merely "existent," but to circumscribe the range of rational philosophical inquiry (of "science") to what has the self-determining unity of the "actual," as opposed to what has the structure of merely "determinate being," "existence" and the other determinations discussed earlier in the *Logic*.

Finally, then, on my account it is no surprise that in the final paragraph of §6, Hegel makes clear that the targets of the *Doppelsatz* are those who have a certain view of philosophical inquiry, who either criticise it as no more than empty theorizing, or who argue that this is what it should be: for, as we saw on my account of the Preface to the *Philosophy of Right*, this is Hegel's main target there too: "The notion that ideas and ideals are nothing but chimeras, and that philosophy is a system of pure phantasms, sets itself at once against the *actuality of what is rational*; but, conversely, the notion that ideas and ideals are something far too excellent to have actuality, or equally something far too impotent to achieve actuality, is opposed to it as well."⁶⁰ Hegel accepts that one may quite properly feel that we may never be philosophically satisfied with how things are at a certain level, the level of "trivial, external, and perishable objects, institutions, etc."; but philosophy does not deal with things at this level, but with "an actuality of which these objects, institutions and structures are only the superficial outer rind"—and at *that* level, Hegel claims, "science deals only with the Idea—which is not so impotent that it merely ought to be."⁶¹ As in the Preface to the *Philosophy of Right*, therefore, Hegel's principal aim is to identify what is rational and what is actual in order to show that "the content of philosophy is *actuality*" as its object of investigation,⁶² not to claim anything about the normative status of "the actual" as what is "right" or "good."

Having looked at some length at how the reference to the *Doppelsatz* in §6 of the *Encyclopaedia Logic* can be fitted into my account of its meaning in the Preface of the *Philosophy of Right*, let me now look rather more briefly at the other three cases, where Hegel offers variants of it. From my point of view, the difficulty with these variants is that Hegel may seem to be bringing out the latent critical potential of the *Doppelsatz* by using "rational" in a normative sense, and so they may seem to show that the progressive reading is correct.⁶³

The first of these variants is from the Heidelberg lectures of 1817/18, where Hegel says that "What is rational must happen." Defenders of the progressive reading of the *Doppelsatz* have argued that this shows that he wanted to use the *Doppelsatz*, not in order to say that the existing political order is for the best, but that this

⁶⁰ Hegel, *Enzyklopädie Logik*, §6, 48; *Encyclopaedia Logic*, 30.

⁶¹ Hegel, *Enzyklopädie Logik*, §6, 48–49; *Encyclopaedia Logic*, 30.

⁶² Hegel, *Enzyklopädie Logik*, §6, 47; *Encyclopaedia Logic*, 29.

⁶³ See Shlomo Avineri, "The Discovery of Hegel's Early Lectures on the Philosophy of Right," *The Owl of Minerva*, 16 (1985), 202–3; Henrich, "Vernunft in Verwirklichung," 13–17; Allen Wood, *Hegel's Ethical Thought* (Cambridge: Cambridge University Press, 1990), 13.

political order must inevitably evolve into one that is ideal, so that this remark should be seen in line with Hegel's providential philosophy of history.⁶⁴ However, I would argue that this again takes Hegel's remark out of context. When Hegel comments that "What is rational must happen," he is not talking about any preferred constitutional arrangement, which he is claiming will come to pass, and so is not making a providential point about history; rather, he is talking about constitutions *in general*, where his focus is on the question: "Who is to make the constitution—the people or someone else?"⁶⁵ Hegel, however, thinks that this is "a wholly abstract, empty question," because the constitution is nothing other than the reflection of the national spirit of the people, and so cannot be "made" by anyone, for it already belongs to them: "The constitution is the foundation, the basis on which everything transpires. It must therefore be viewed as an eternal foundation, not as an artifact."⁶⁶ It is with reference to this national spirit and its relation to the constitution that Hegel makes his remark about the rational: "The national spirit [*Volkgeist*] is the substance. What is rational must happen, since on the whole the constitution is its development."⁶⁷ Taken in context, this would appear to mean that Hegel is claiming that the constitution is rational in the sense that it does not arise arbitrarily, since its relation to the national spirit means it must be realized, and so can be explained as more than just the contingent product of any individual (such as a legislator), or individuals (as on the social contract model).⁶⁸ Once again, therefore, nothing here seems to imply that we should interpret the *Doppelsatz* in either a progressive or a conservative manner.

Now, against this interpretation, it could be pointed out that at the end of this paragraph, the text reads: "But the rational must always find a way, for it possesses truth, and we must cease to fear that bad constitutions can be made."⁶⁹ It could

⁶⁴ See Wood, *Hegel's Ethical Thought*, 13.

⁶⁵ G. W. F. Hegel, *Vorlesungen über Naturrecht und Staatswissenschaft*, eds. C. Becker et al., (Hamburg: Felix Meiner, 1983), §134, 189; *Lectures on Natural Right and Political Science: The First Philosophy of Right: Heidelberg 1817–1818*, trans. J. Michael Stewart and Peter C. Hodgson (Berkeley: University of California Press, 1995), 239.

⁶⁶ Hegel, *Vorlesungen über Naturrecht und Staatswissenschaft*, §134, 190; *Lectures on Natural Right and Political Science*, 240. Cf. *GPR*, §273, 439; *EPR*, 311–12.

⁶⁷ The two recent German editions of these lecture notes in fact give different versions of the text. The version given here is from *Die Philosophie des Rechts: Die Mitschriften Wannenmann (Heidelberg 1817/18) und Homeyer (Berlin 1818/19)*, ed. Karl-Heinz Ilting (Stuttgart: Klett-Cotta, 1983), 157. In the edition edited by C. Becker et al., which forms the basis for the *Lectures on Natural Right and Political Science* translation, the text is given as follows: "The national spirit is the substance; what is rational must happen. Since in principle the constitution is a development, the individual moments acquire the form of something won by struggle, either by one side or the other, people or prince, by contractual means or force" (Hegel, *Vorlesungen über Naturrecht und Staatswissenschaft* §134, 192; *Lectures on Natural Right and Political Science*, 242). By reading "seine" as "eine" before "Entwicklung," this version makes it even less clear that Hegel took the constitution to be the development of reason, as the progressive reading has it.

⁶⁸ Cf. Hegel, *Vorlesungen über Naturrecht und Staatswissenschaft*, §134, 190–91; *Lectures on Natural Right*, 240–41, where Hegel argues that in the cases of Moses, Solon and Louis XVIII, these figures merely made the national spirit concrete and explicit in the form of their respective constitutions, but did not devise them as individuals (where Hegel suggests that this is reflected in the fact that Moses thought of his constitution as coming from God, and Solon as coming from an oracle).

⁶⁹ Hegel, *Vorlesungen über Naturrecht und Staatswissenschaft*, §134, 192; *Lectures on Natural Right*, 242.

then be argued that when Hegel says "What is rational must happen," he must be talking about some preferred constitutional arrangement; otherwise, how can he say that once we see that "the rational must always find a way," then "we must cease to fear that bad constitutions can be made"? However, this again misunderstands the context of Hegel's remark concerning our fear of bad constitutions. For, his claim is that we should lose this fear, not because the good or rational constitution must come about and so surpass any bad ones, but because we have seen that constitutions are the expression of the national spirit, and as such "[e]ach nation accordingly has the constitution appropriate and proper to it,"⁷⁰ and so a good constitution in *this* sense. When Hegel claims that "What is rational must happen," therefore, he does not seem to be talking about "the right" or "the good," and so is not using 'rational' here in a normative sense.

The second of these variants on the *Doppelsatz* is from the Berlin lectures of 1819, where Hegel says that "What is actual becomes rational, and the rational becomes actual."⁷¹ This variant has in fact caused difficulties for those who propose a progressive reading of the *Doppelsatz*; for, if Hegel means by 'the actual' whatever properly realizes its essence, then it is not clear he can speak of it as *becoming* rational, since if it is "actual" in this sense it presumably already *is* rational, and it is odd to speak of it as becoming so. In the face of this difficulty, Hardimon suggests that here Hegel "is using the word 'actual' to mean 'existent,' and hence violating his self-imposed linguistic strictures, but he is *not* identifying the existent with the actual."⁷² As a solution, however, this seems rather awkward; and I would suggest that my neutral reading offers a better way of taking this variant.

As with the first variant, the immediate context of this second variant is a reference to the constitution of the state, which Hegel says is "the arrangement of [the] inner spirit" of an age, and so "certainly happens and is necessary," because against this inner spirit "there is no power in heaven or earth."⁷³ As we have seen, Hegel holds that something can be determined by reason if it is necessary or must obtain. He therefore says that "the right of spirit" of which the constitution is the arrangement is not a product of "reflection and imagination, which one can bring forth at will out of abstract thinking or out of the goodness of one's heart"; rather, it is something rational insofar as "what is rational becomes actual, and what is actual becomes rational," whereas the products of "reflection and imagination" do not relate to actuality in this way, but may or may not obtain. So, once again, Hegel is not talking about some particular ideal (rational) constitution that must

⁷⁰ GPR, §274, 440; EPR, 312.

⁷¹ G. W. F. Hegel, *Philosophie des Rechts: Die Vorlesung von 1819/20 in einer Nachschrift*, ed. Dieter Henrich (Frankfurt: Suhrkamp, 1983), 50. It is perhaps also worth remarking that in the notes of the lectures taken by Johann Ringier from the same period, a version equivalent to the standard form of the *Doppelsatz* is given: "was vernünftig ist, ist wirklich und umgekehrt"; see G. W. F. Hegel, *Vorlesungen über die Philosophie des Rechts: Berlin 1819/20, Nachgeschrieben von Johann Rudolf Ringier*, eds. Emil Anghern, Martin Bondeli and Hoo Nam Seelmann (Hamburg: Felix Meiner, 2000), 8; and see also the editors, comments in *ibid.*, xx–xxiii.

⁷² Hardimon, *Hegel's Social Philosophy*, 64. See also Joseph McCarney, *Hegel on History* (London: Routledge, 2000), 98.

⁷³ Hegel, *Philosophie des Rechts: Die Vorlesung von 1819/20*, 51.

be realized, but about what gives "the right of spirit" the status of being rational (as something that "certainly happens and is necessary"), in contrast to the products of "reflection and imagination."

The third variant on the *Doppelsatz* which has been discussed is one Hegel reportedly offered in conversation to the poet and philosopher Heinrich Heine, in an incident which Heine recounts as follows:

At times I saw him [Hegel] looking around anxiously as if in fear he might be understood. He was very fond of me, for he was sure I would never betray him. At that time, I actually thought that he was very obsequious. Once when I complained about the phrase: "All that is, is rational," he smiled strangely and remarked, "It could also be formulated as all that is rational must be." Then he looked about him hastily; but he was quickly reassured, for only Heinrich Beer had heard his words.⁷⁴

In this exchange, it could be argued, Hegel is clearly using the term 'rational' in a normative sense (and so by implication is doing so in the *Doppelsatz*), for he seems to be saying to Heine that he believes not that the world as it *is* is right or good, but the world as it *will be*. Thus, the exchange with Heine would seem to lend support to the progressive reading of the *Doppelsatz*, that here Hegel is not endorsing the existing political order by calling it rational, but one that is yet to come. This is Hegel's response to Heine's challenge of "obsequiousness," while the reformist outlook it implies explains his fear of being "understood."

Now, clearly, Hegel in this exchange is addressing a worry about his apparent conservatism and quietism. The question is, however, whether this is a worry raised by the *Doppelsatz* as a normative endorsement of what is (as on the standard reading), or the *Doppelsatz* as a statement of Hegel's anti-utopian rationalism (as on my reading). The latter seems to me as plausible as the former, where the worry would be this. I have argued that the aim of the *Doppelsatz* is to make a methodological point: that in so far as it is rational, philosophy is not an inquiry into what merely ought to be as some unrealisable ideal, but that it reaches conclusions which engage with the real world. It is therefore a statement of Hegel's anti-utopianism, rather than a normative claim about "the actual." On my account, therefore, the concern Hegel is addressing in his reply to Heine is the worry that this anti-utopianism means that philosophy can theorize about the state only in line with how things are, with the result that the philosopher's position becomes "obsequious." In response to this worry, Hegel tries to suggest to Heine that his anti-utopianism is also consistent with a rather more radical position: for the results of his inquiry can avoid being merely ideal if they engage not just with how the world *is* but also with how it *will be*, as a matter of necessity. So, once again, I would argue that we can interpret Hegel's use of the term 'rational' here in a neutral sense, while explaining the exchange with Heine.

(2) I now turn to a second objection to my reading of the *Doppelsatz*, which is that I have failed to recognize its full normative weight, because I have failed to set it in the context of his "social theodicy" or "project of reconciliation," but instead have

⁷⁴ Hegel in *Berichten seiner Zeitgenossen*, ed. Günther Nicolini, (Hamburg: Felix Meiner, 1970), §363, 235; Heinrich Heine, *Self-Portrait and Other Prose Writings*, trans. F. Ewen, (Secaucus: Citadel Press, 1948), 254–55 (translation modified).

set it in the context of his defense of philosophical rationalism. The aim of Hegel's social theodicy, it is argued, is "to reconcile people to the social world" by "showing that the social world is ultimately good."⁷⁵ Once this context is recognized, it could be argued, it becomes obvious that when Hegel uses the term 'rational' in the *Doppelsatz*, he is doing so in a normative sense, because he is hereby expressing his conviction that the social world qua actual is good in this way. So, once "the large themes of theodicy and of the actuality of the rational"⁷⁶ are put together, it may seem indisputable that the *Doppelsatz* should be understood normatively, as asserting the fundamental goodness of the actual. Moreover, it could be argued that Hegel himself clearly makes this link between his social theodicy and the *Doppelsatz* in subsequent parts of the Preface, for example when he talks about "the reconciliation with actuality" which comes once one is able to "recognize the rose in the cross of the present" (*GPR*, 26; *EPR*, 22), where this suggests that by finding that the rational is actual and the actual is rational, one will come to see goodness where before the world appeared to contain only what was wrong.

Now, clearly, my account of the *Doppelsatz* must give some explanation of this talk of "reconciliation" in the later part of the Preface, and how this links with the *Doppelsatz*. However, I think this can be done without reading the *Doppelsatz* itself in normative terms. For, as we have seen, on my more methodological reading, Hegel's claim is that philosophy as a rational inquiry will avoid "the setting up of a world beyond," so that in this sense it will prevent us yearning after some unrealizable ideal, and so will overcome our social alienation in this sense. Hegel holds that by relying on reason, rather than "his opinion—a pliant medium in which the imagination can construct anything he pleases" (*GPR*, 26; *EPR*, 22), the theorist will arrive at an account of the social world that relates to the here and now. So, it is by receiving the "inner call to comprehend"—to think rationally, in accordance with the concept—that philosophy brings about "reconciliation with actuality"; this avoids the empty utopianism which comes to those who fail to philosophize properly, where "reason is arraigned, belittled, and condemned" (*GPR*, 22; *EPR*, 18). Hence, Hegel confidently claims that when properly conducted, when free of "the fetter of some abstraction or other which has not been liberated into [the form of] the concept [*zum Begriffe*]" (*GPR*, 26; *EPR*, 22), philosophy becomes properly this-worldly, and so can take as its motto "*Here is the rose, dance here*" (*GPR*, 26; *EPR*, 22). It is in the sense of being "this-worldly" that Hegel speaks of philosophy as a rational exercise reconciling us to the present and leading us to "delight" in it—not in the sense of accepting whatever political institutions we happen to have got.

To explain Hegel's talk of reconciliation in the later part of the Preface, therefore, it is not necessary to take the *Doppelsatz* itself as a statement of his social theodicy, in a way that would make it clearly normative: my methodological reading can also explain this talk of reconciliation. Moreover, I would argue that my methodological reading better fits elements that are awkward for the social theodicy reading to explain. To take a general example: On the social theodicy account,

⁷⁵ Hardimon, *Hegel's Social Philosophy*, 20. See also Raymond Geuss, "Art and Theodicy," in his *Morality, Culture, and History* (Cambridge: Cambridge University Press, 1999), 78–115.

⁷⁶ McCarney, *Hegel on History*, 214.

the aim is to show people through philosophy that the world is fundamentally good, where it is said that this is what the *Doppelsatz* is claiming through its identification of the rational and the actual. But Hegel himself says in the Preface that most people "who live within the actuality of the state" recognize that they "are able to satisfy their knowledge and volition within it" (*GPR*, 16; *EPR*, 14), so this makes it hard to see how philosophy can help bring about reconciliation to people in general, where for Hegel they would appear to be reconciled already. It would seem, then, that it is the misguided *philosophical theorist* (not to mention those who follow him) who suffers from alienation, where the cure is to adopt reason as his method (as on my methodological account), rather than to see what is "actual" as "good" rather than "bad" (as on the social theodicy account), for it is with respect to the former rather than the latter that he makes his mistake *qua* philosopher. Secondly, to take a more specific example: Hegel says of the *Doppelsatz* that, "This conviction is shared by every ingenuous consciousness as well as by philosophy" (*GPR*, 25; *EPR*, 20). Now, here Hegel seems to be commenting on philosophy as such; but it seems curious to say that philosophy as such has a commitment to social theodicy, but much more natural to think that philosophy has a commitment to reason and rational methods, and that these methods must be used if we are to uncover the truth about the world at its most fundamental level.⁷⁷ Here again, then, what Hegel says seems to fit my methodological reading better than the social theodicy account does, and thus lends support to my neutral interpretation of the *Doppelsatz*.

5

For generations of commentators, the *Doppelsatz* has acted as a focus for contrasting interpretations of Hegel's position on ethical and social issues. As such, it has been treated as a one-sentence summary of Hegel's political philosophy, which is the way both the conservative and progressive readings take it. In contrast to both these accounts, my reading treats the *Doppelsatz* as more of a prefatory remark than as a summary of the political outlook propounded in the *Philosophy of Right* as a whole. That is, on my view it is simply designed to tell the reader that Hegel's approach in that work will involve a certain sort of rationalism with respect to its inquiry, where Hegel's main aim in the Preface is to defend the importance of being committed to such rationalism as a method in philosophy in general, and in political theory in particular. On my account, then, the *Doppelsatz* should no longer be seen as a summary of the political conclusions of the *Philosophy of Right*, but rather as a comment on the rationalistic spirit in which it is written, where its investigations are based on "the development of thought and the concept," and

⁷⁷ See Hegel, *Wissenschaft der Logik I*, 44–45; *Science of Logic*, 50–51:

Anaxagoras is praised as the man who first declared that *Nous*, thought, is the principle of the world, that the essence of the world is to be defined as thought . . . *Thought* is an expression which attributes the determination contained therein primarily to consciousness. But inasmuch as it is said that understanding, reason, is in the objective world, that mind and nature have universal laws to which their life and changes conform, then it is conceded that the determinations of thought equally have objective value and existence.

not on “immediate perception and contingent imagination” (*GPR*, 18–19; *EPR*, 15), which can take us only to a superficial level, and not to a proper grasp of what is “actual.” Hegel was perhaps correct to be puzzled by the furor surrounding his “simple sentences,” once (as I recommend) they come to be understood in this light.⁷⁸

⁷⁸ Earlier versions of this paper were given at departmental seminars at Manchester Metropolitan University and the University of Sussex; I am grateful to those who provided helpful criticisms on those occasions. I am also grateful to the following people for comments on earlier drafts: Henk de Berg, Thom Brooks, Andrew Chitty, Gordon Finlayson, Fabian Freyenhagen, Raymond Geuss, Joseph McCarney, Kristina Mussnug-Barratt, Robert Pippin, Leif Wenar, and two anonymous referees for this journal. I would also like to acknowledge the support of the Arts and Humanities Research Council, for funding the research leave during which this paper was written.

[2]

Freedom and Social Categories in Hegel's Ethics

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Interpretations of Hegel are legion. It has been said (not wholly in jest) that there are as many readings of Hegel as there are readers of Hegel. One of the problems to be faced in an interpretation and evaluation of Hegel's thought is how to formulate exactly what issues Hegel thought his philosophy to be resolving and relating those issues to more contemporary concerns. This can be done either by showing that the issues which Hegel found troubling are similar to or identical with those that trouble us; or by showing that Hegel's troubles should be our troubles, that we are in some sense myopic in a way that an understanding of Hegel (even if we reject his own proposals for solutions) would correct.

I wish to do something like this with regard to Hegel's ethics by evaluating his theory in terms of its being a successor to Kantian ethical theory. Now, one way of doing this would be careful comparison of the Kantian and Hegelian texts, raising issues such as whether or not Hegel, e.g., really understood the Kantian concept of universalization in ethics. However, I want to propose a slightly different approach. Kant's philosophy gave rise to various schools of Neo-Kantianism, each of which saw itself as carrying on the Kantian program (or what was essential to it). Those people from Riehl to Rawls understood and understand themselves as continuing the Kantian program while improving on it in certain ways. What I propose is that we see Hegel's theory as Hegel himself did, both as a continuation of the Kantian categorial-explanatory program and as a genuine and plausible alternative to Kantianism,¹ but with a similar eye that the

¹ I have offered versions of this reading as it applies to the *Science of Logic* elsewhere. Cf. Terry Pinkard, "The Logic of Hegel's *Logic*," *Journal of the History of Philosophy* 17 (October 1979): 417-35; "Hegel's Idealism and Hegel's *Logic*," *Zeitschrift für philosophische Forschung* 33 (April-June, 1979): 210-26; "Hegel's Philosophy of Mathematics," *Philosophy and Phenomenological Research* 41 (September 1980-June 1981): 452-64.

Neo-Kantians cast toward Kant: to see how one might consistently read the Hegelian theory with an eye to putting it in place to offer proposals to contemporary philosophical troubles.

My strategy in doing this will be to stress the ways in which Hegel's ethics departs from Kantian ideas in order to evaluate Hegelian theory as a corrective to Kantian theory. Given the resurgence of interest in the "Neo-Kantian" style of ethical theory these days, a re-reading of Hegel along these lines might offer some insight into a plausible reading of Hegel's notoriously difficult ideas. I shall not make any close comparison with Kant's texts at all, since that would make this paper unnecessarily long, and it is not necessary for the task at hand, which is ultimately a comparison of types of theories, not of texts. In particular, I shall focus on how Hegelian ethical theory differs from Kantian ethical theory in the following ways. I shall examine, first, the way in which Hegel locates the freedom of the will not in the will's giving itself a law but in the types of objects of the will; second, the way in which Hegel interprets the principle of respect for persons differently than Kant; third, the way in which Hegel extends the Kantian *categorical* program to social and political philosophy; finally, I wish to close with some general comments on Hegel's theory of the state. Although I shall not make any detailed comparisons of the Hegelian and the Kantian conceptions of the last point, I hope to show how Hegel's different understanding of the principle of respect for persons has positive consequences for a theory of the state.

1. The Idea of Freedom and Respect for Persons

The basic concept for Hegel's ethics — like that of Kant's — is freedom. The *Philosophy of Right* is an articulation via dialectical argumentation of what the ontological and institutional conditions for freedom would be.² Both Hegel and Kant are concerned with explaining the possibility of

² I understand dialectical argument in the following way. Dialectical philosophy attempts to show that certain kinds of descriptions (what we may call levels of discourse) only have their determinateness (i.e., they only make sense) within a larger context of descriptions into which they are integrated (*aufgehoben*). Dialectical philosophy may indeed be seen as an extension of the idea of philosophy as the explanation of possibilities; the well-known procedure of the dialectic as showing the way out of contradictions is linked with this. What is important in dialectic is that it shows that certain categories are in apparent conflict with each other when they are formulated at a certain level of discourse but that at a higher level of discourse, one can explain how it is possible that the implicit claims of the lower level categories are compatible. In other words, holding both categories or sets of categories may at first *seem* to be impossible, as they seem to contradict each other, but a dialectical argument shows that they are in fact compatible with each other, when viewed from the standpoint of an enriched framework of description. I have elaborated on these points more fully in the articles cited in footnote 1.

freedom. However, whereas Kant's explanation rests on the idea of the will's legislating for itself, Hegel's proposal is much different. Treating freedom at first, as Kant does, as a problem of the will, Hegel defines the will in the following way: "The will is . . . particularity reflected into itself and so brought back to universality, i.e., it is individuality. It is the self-determination of the ego . . . it determines itself and yet at the same time binds itself together with itself."³ Hegel tries to clarify this in another remark: "Every self-consciousness knows itself (i) as universal, as the potentiality of abstracting from everything determinant, and (ii) as particular, with a determinate object, content and aim."⁴ I would parse this as saying that the will has objects of two types: (1) straightforward desires for this or that thing (particularity); (2) second-order evaluation of those straightforward desires according to norms and values (universality).⁵ Hegel's claim would then be that only when our straightforward desires (the particulars) *coincide* with our *evaluations* of what would be good and right to desire (the universal), is our will truly free.⁶

Passages in the Introduction to the *Philosophy of Right*, reinforce this line of interpretation. When the "will's content" is "immediate," i.e., is a simple object of straightforward desire — a 'want', as it might be called — the "will is then free only *in* itself . . . it is not until it has itself as its object that the will is for *itself* what it is in itself," i.e., free.⁷ The immediate will is, in Hegel's words, arbitrary.⁸ If being free is doing what one wants, then one must have some criteria for selecting what one wants. However, if "wants" are only our "impulses and inclinations,"⁹ then no criteria of selection can be given, since many wants will conflict with one another. We can want to do both X and Y, but X and Y may be mutually exclusive. Hegel thinks that this leads us into the contradiction between saying that we are free (we do what we want, i.e., X) and yet unfree (we do not do what we want, i.e., Y). In part, this is Hegel's criticism of a hedonic (or utilitarian, if one wanted to restrict that term to its Benthamite

³ G. W. F. Hegel, *The Philosophy of Right*, trans. T. M. Knox (London: Oxford University Press, 1952), p. 7. Although I use Knox's translation in this article, from time to time I alter it slightly for emphasis.

⁴ Ibid.

⁵ This is not to be confused with the familiar distinction made by Harry Frankfurt between first and second order desires. Cf. Harry G. Frankfurt, "Freedom of the Will and Concept of a Person," *Journal of Philosophy* 43 (January 14, 1971): 5-20.

⁶ Gary Watson has argued a similar thesis. Cf. Gary Watson, "Free Agency," *Journal of Philosophy* (April 1975): 205-20.

⁷ Hegel, *Philosophy of Right*, § 15, remark.

⁸ Ibid.

⁹ Ibid.

varieties) theory of rational choice. A rational choice on that view would simply come down to being a ranking of various desires on the basis of compossibility and intensity of desire. Such a view, if we can put words into Hegel's mouth, rests on a conflation of two notions of "want". There is wanting in the sense of a straightforward desire for something; two wants may conflict in this sense of "want" in that, e.g., one may want to be in two places at the same time (as when a person wants to go to two different events at the same time). There is also wanting in the sense of holding something to be worthwhile, to be worth doing or experiencing or having; this is a want in the sense of an evaluation of our desires or of the world. The hedonic method of ordering our wants cannot supply us with a sense of this latter sense of "want". It cannot tell us which impulses and inclinations it is better to have; it can only tell us which of our wants are incompatible with each other. It cannot, to put it into Hegelian terms, tell us what the proper objects of willing are; it can at best provide us with a formally consistent system of wants. It is this latter, evaluative system of wants that leads one to the realm of values, of reason.

The dialectical solution to the apparent contradiction found in locating freedom at the level of simple wants (i.e., without bringing in a system of evaluations) is to modify the framework of description as has been indicated and see that "the impulses should become the rational system of the will's volition."¹⁰ The freedom of the will cannot then consist of a simple ordering of the various wants of a person into an ordering of consistency and compossibility; it must consist in something more. This something more will be, as we shall see, the willing of proper objects of the will. To locate our desires within a framework of evaluations would be to do two things: (1) it would be to *idealize* them,¹¹ in Hegel's sense, to render them intelligible by locating them in a rational moral framework; (2) it would also be to make them *my own* desires, rather than ones that are 'external'

¹⁰ Ibid., § 19.

¹¹ Cf. *ibid.*, § 7. The key moment of the concept of mind in Hegel's account is that of idealization. *Ideality* is "the distinctive determinateness of the concept of mind" which is identified as the "integration (*Aufheben*) of the otherness of the Idea". *Enzyklopädie der philosophischen Wissenschaften* (1830) (Hamburg: Felix Meiner, 1969), § 381 Zusatz. Hegel says, "This integration of the externality which belongs to the concept of mind is what we have called the *ideality* of mind. All activities of mind are none other than different manners of reducing what is external to the inwardness which mind itself is, and it is only by this reduction, by this idealization or assimilation of what is external that it becomes and is mind" (*ibid.*). The metaphor at work here is one modeled on Kant's Copernican Revolution; in idealizing things, mind brings them within its orbit and *comprehends* them. It does not mean to see something only in terms of some vision of its perfection (as the English word, "idealization", would seem to suggest).

to me. (Both of these are aspects of the same activity from the universal and the particular point of view, respectively.)¹²

It is in his theory of the freedom of the will that Hegel makes perhaps his most decisive break with Kantian ethical theory. Both Hegel and Kant utilize the same abstract description of the freedom of the will, viz., that of the will making itself its own object, or of the will willing itself. They both offer a criticism of the hedonic theory of the freedom of the will and opt for the determination of the will by reason. For Kant, however, this is to be interpreted as the will acting according to its own *idea of law*. This is basic to the Kantian idea of autonomy: the notion of freedom is to be equated with the idea of *self-legislation* (of auto-nomos). The will is free in Kantian theory when it is able to prescribe to itself which *rule* will determine its action. (I realize that this obscures the distinction of hypothetical and categorical imperatives, but that distinction is not important for the present exposition.) Because of this view of what constitutes the freedom of the will, Kantian ethics is ultimately an ethics of *rules*, that is, of which rules and which relations of rules adequately capture the moral quality of the free will. For Kant it is the move from hypothetical to categorical imperatives that constitutes the move from 'wants' to 'reason'. Hegel's alternative, i.e., "speculative," explanation sees the freedom of the will as residing not in the *rules* which the will gives itself but in the *objects* of the will. When the will wills a proper object, it may be said to be free, rather than when it simply gives itself its own law or "rule". I shall not go into any depth here concerning Hegel's well-known criticism of Kant on these grounds; it is the by now familiar claim (and one that Kantians have always denied) that Kant's rule-oriented ethic must remain an empty formalism, that it cannot provide any content to the will. A rule which is universal enough to express a universal demand of reason in Kantian terms cannot possibly give any specific content to willing. Hegel's proposal, to which we shall come shortly, is to hold that content can come to the will

¹² About this second point: the person who is drawn by desires that he or she would rather not have (e.g., an uncontrollable desire to steal or to do embarrassing things) is often said (and often describe themselves) as being driven by desires that are not really their own. How would this be possible? Since our system of evaluations makes up to a large extent our standpoint in the world (why else is idealization so important for Hegel?), it also defines in large part *who* we are. It is only when we are able to fit these desires into our systems of evaluation that we often feel that they belong to us, that they are part of who we are. Until then, we may feel ourselves to be driven by forces alien to us. The free person is one who is able to mesh his or her desires and evaluations — i.e., able to do what he or she really wants. A theory of freedom must therefore be a theory of these evaluations and of which set expresses our nature as rational agents: it will also be an ethical and political theory, since it will be a theory of the social and political conditions for our ability to make concrete valuations. That is, it will be a theory of the moral *world*.

only by means of categories, in something like the Kantian sense of them; just as there are categories of theoretical reason, there must — if the will is to have any content — be in Hegel's view categories of practical reason. Kant's view, as we might reconstruct it, was that such practical categories would undermine the autonomy of the will, since the categories which are found in theoretical reason are simply the logical forms of judgment synthesized with a form of sensibility (time). Since the categories are thus dependent on experience, to argue for practical categories would make the will dependent on forms of experience and thus not autonomous. The will must be formal, on Kantian terms, if it is to retain its autonomy. Hegel's speculative approach to categorial philosophy allows him to sidestep this Kantian hesitation. Categories are justified as explanations of the possibility of other categories — specifically, they are justified if they show how an apparent contradiction between lower level categories is to be avoided — and not just as explanations of the possibility of experience. Reason on its own can deliver content by virtue of its speculative function; it does this not by spinning the categories out of itself but by showing how one set of categories explains the possibility of other sets (the categories themselves are reconstructions from experience; Hegel never holds that reason simply produces them *ex nihilo*.¹³).

For Hegel, the will is free when it wills according to its nature — when it wills its proper object. The Hegelian theory will be concerned therefore with a theory of the proper objects of the will rather than with the relations among rules. This gives the Hegelian theory a completely different look from any type of Kantian theory. Kantian theories typically are concerned with the deductive (and other formal) relations among rules; among the standard concerns of Kantian theory is the search for some single moral truth — such as the categorical imperative — or some minimal set of moral truths along with some objective and formal procedure with which one can derive the other moral truths. One would search in vain for any such theory in Hegel's writings. Hegel's theory will be a theory of what *are* and what *are not* the fully proper objects of the will. His contention will be that this cannot be given (1) outside of a theory of what kinds of basic social categories there are; and (2) outside of the concrete mores and ethos of a culture. The proper objects of the will will be these *evaluations* or ideals; it is because of this, as we shall see, that *only* a doctrine of

¹³ In the introductory paragraph to the section on the philosophy of nature in the *Enzyklopädie*, Hegel says, "Not only must philosophy be in correspondence with our experience of nature, the *origin and formation (Entstehung und Bildung)* of philosophical science has empirical physics as its presupposition and condition" (§ 246).

social categories and the mores and ethos of a society can provide the will with a proper object.

Because of his break with Kantianism in his understanding of freedom, Hegel is able in an important way to break also with Kant's understanding of the principle of respect for persons. To be a *person* for Hegel is to be awarded a certain *status*;¹⁴ it is not merely to be a *human* (an organism) but to have a "capacity for rights" (*Rechtsfähigkeit*).¹⁵ This status also implies that the person is free (in the Hegelian sense).¹⁶ "Hence the imperative of right is: 'Be a person and respect others as persons'."¹⁷ This only sounds like a Kantian claim. To be a person is not the same thing as prescribing to oneself rules to determine one's will; it is to be a self-conscious, rational, free agent — that is, an entity capable of acting in accordance with a will that has the proper objects as the objects of its willing. On a plausible reading of his texts, Kant seemed to identify respect for persons with respect for their autonomy, since it was the capacity for moral autonomy that was the morally significant thing about them. In fact, this was the very criterion for their being moral persons at all.¹⁸ On this reading, therefore, Kant identified respect for dignity with respect for autonomy. However, Hegel did not — and on the basis of his theory need

¹⁴ Ibid., §§ 35, 47.

¹⁵ Ibid. The term is a legal one, and it is from this legal usage, I assume, that Hegel derives his own usage. The legal usage of the term has been explained in the following way: "To be a person means to be capable of holding rights, i.e., to be *rechtsfähig*. The capacity to hold rights (*Rechtsfähigkeit*), which is enjoyed by all persons, must be distinguished from the capacity to enter into legal transactions (*Geschäftsfähigkeit*) and the capacity to be responsible for civil delicts (*Zurechnungsfähigkeit*)." E. J. Cohn, *Manual of German Law* (London: His Majesty's Stationery Office, 1950): § 105.

¹⁶ Indeed, so Hegel claims, "individuals and nations have no personhood until they have achieved this pure thought and knowledge of themselves," where this knowledge of themselves is specified as a knowledge of self, as "self-relation," as "purely self-identical," i.e., as "something infinite, universal and free," Ibid., § 35. This is, of course, another specification of Hegel's notion of mind as that which comprehends things and idealizes them, that is, as "infinite," not bound by anything except the limits set by its own rational nature. The concepts through which it organizes the world (into *Idea*) are bound only by the constraints of reason (of making sense) which are its nature; hence, it is not limited by an other, (which would make it finite) but only by itself and hence it is infinite.

¹⁷ Ibid., § 36.

¹⁸ Compare, for example, what Kant says in the *Groundwork of the Metaphysics of Morals*, trans. H. J. Paton (New York: Harper and Row, 1964), p. 107: "Our own will, provided it were to act only under the condition of being able to make universal law by means of its maxims — this ideal will which can be ours is the proper object of reverence; and the dignity of man consists precisely in his capacity to make universal law, although only on condition of being himself also subject to the law he makes."

not — identify respect for the *person* with respect for all the person's *choices*; respect for dignity and respect for free choice will not be the same on the Hegelian view. His rejection of this Kantian identification of respect for autonomy with respect for persons has important consequences; it gives Hegel a basis for his criticism of social contract theory (to which Kant himself subscribes, holding that the social contract is a regulative Idea of reason). If the state is construed as the result of choices that people make, then it becomes a kind of voluntary *association*, a club as it were, from which perhaps some people may be arbitrarily excluded by the wishes of the members of the club. (I shall discuss this in greater detail in section four below.)

Respect for persons is, however, only an “abstract right” in the sense that it does not specify what counts as respect. It does, however, apply to all those entities who satisfy the criteria for being persons.¹⁹ Personhood then is not merely a descriptive category but also an *evaluative* one. To describe something as a person is to locate it within the moral world, that which the practical mind (or, in Hegel's terms, objective mind) produces. In Hegel's world, it is to idealize it.²⁰ To be a person then is minimally to have abstract rights which concern what is necessary to respect one's personhood. Thus, the abstract rights (the classical natural rights) appropriate to personhood are independent of the particularity of individuals. Moreover, Hegel believes that the basic injunctions of “abstract right” are *negative* in character: “Do not injure personhood and what is entailed by it.”²¹ This is a significant move in Hegel's theory; he does not argue that we should produce more of the basic quality of personhood, nor does he make any kind of maximizing claim about persons. Rather, he is content to make the negative claim that one must not destroy or injure personhood (as an abstract duty). More important, Hegel does not convert the claims of abstract right into demands to respect the *choices* of people *per se*, but only to respect their personhood and avoid injuries to that.

2. Masters, Slaves and Morality

The arguments about personhood rest on more general considerations not provided in the *Philosophy of Right* about what would explain the

¹⁹ Compare what Hegel says in the *Enzyklopädie*, § 209: “A person (*Mensch*) counts as such only because he is a person, not because he is a Jew, Catholic, Protestant, German, Italian, etc.”

²⁰ This is again, it should be noted, using “idealization” in its technical Hegelian sense. Cf. footnote 11.

²¹ Hegel, *Enzyklopädie*, § 38.

possibility of such an acknowledgment of others as persons. These arguments are to be found in the “Master-Slave” section of the *Phenomenology*; there Hegel makes the claim, as I understand him, that mutual acknowledgment (*Anerkennung*) of people as ends in themselves is possible only within a higher unity of *selves* and world. Hegel constructs his *phenomenology* of mind as an explanation of how it is possible that mind can *appear* as subjectivity in an objective world.²²

Hegel’s concern there is to delineate this structure of an I’s act of self-consciousness where one of the elements in the world of which it is aware is another self-consciousness. In other words, it is to delineate what in the abstract having another person as the object of one’s will entails. Hegel makes the whole intersubjective context of human action and relating oneself to oneself turn on what it means to *acknowledge* other persons — in their feelings, in their freedom, and in their *status* as persons — and to have each person acknowledge oneself. He begins with the language of desire or appetite, a description of human wants and actions in terms of means/ends rationality and of satisfaction of one’s *own* desires. He says that a description of oneself in this manner sees the object of desire as having “no true reality”,²³ meaning, I take it, that the object functions only as a means in the person’s scheme of desires and thoughts. Indeed, the object can have no intrinsic worth; it is incapable of demanding any ‘respect’ on its own. Its worth can only be instrumental. It figures in the person’s scheme only to fill some “lack” of the person.²⁴ Hegel notes that, as construed, desire is “destructive, and in its *content* selfish”.²⁵ The object of this type of simple desire can only be specified in terms of the person’s own interests.²⁶

²² This is, at least as I take it, the systematic reason for its placement in the mature *Encyclopedia* within the section on “Subjective Spirit” and before the section on “Objective Spirit”. It is another and infinitely more complicated issue to discuss the systematic place and role of the longer *Phenomenology of Spirit vis-à-vis* Hegel’s other works.

²³ Hegel, *Enzyklopädie*, § 426.

²⁴ *Ibid.*, § 427.

²⁵ *Ibid.*, § 428. Zusatz.

²⁶ Were the content to be one in which another’s interests figured, then one would have *altruistic* (or perhaps *sadistic*) desire. Hegel’s passage from this notion of self-consciousness to the notion of consciousness of another person is not an attempt at demonstrating that my self-consciousness is possible only through mastery of, say, a public language that is shared by many self-conscious persons. He is not interested, as I understand him, in epistemologically proving the existence of other minds (although his view of things would involve some such conception of our knowledge of ourselves as possible only in terms of a larger world-knowledge which included conceptions of others). Rather, he is basically concerned with the *acknowledgment* of the other as a *person* and to show that this acknowledgment *cannot* be coherently phrased in the language of desire as a simple

The problem is that, at the level of desire, all objects have value only as means to my own ends. Yet when I confront another on the level of desire alone, I am confronting another person, not merely a thing. Hegel wants to say that there are contradictions here between (a) how I *must* confront the other, viz., as a person and how I ever *could* confront him or her given this framework of desire; (b) how at the level of desire each would be compelled to treat the other as a thing, “natural and corporeal”, while both as persons are “completely free subjects and may not be treated as . . . merely natural things”.²⁷ The other as a person makes a claim on one, an *ethical* claim eliciting respect; at the level of desire, however, there is no place for ethics in this sense, because the kind of acknowledgment of each other which is a condition of the possibility of ethical strategies is necessarily lacking. This basic contradiction results in the dialectic of master and slave, which turns on the tension between the acknowledgment of the other as a person (which is always there) and the refusal founded in the scheme of desire at which the confrontation between the two individuals operates. Each must attempt to subjugate the other, to compel the other to acknowledge him or her while withholding acknowledgment of the other. Each perceives everything in his or her practical field to be an instrumentality for him or her alone and perceives himself or herself to be the only end in itself in that field. But each also perceives the other to perceive him or her as only an instrumentality. To the extent that each is intelligible to himself or herself as the only end in itself and is aware of the other as making the same claim, each must live the contradiction and struggle with the other to get the other to cede that claim to be an end in itself. Either there is the death of one, or one person opts for life and surrenders his or her claim to full acknowledgment. This latter person becomes the slave and must work for the master; the slave, on egoistic grounds, yields to the other to preserve his or her life — yields, that is, on egoistic grounds to being only an instrumentality in the other’s world. But when the slave begins to *work* for the master, so Hegel thinks, a subtle transformation occurs. When the slave begins to work “not in the exclusive interest of his own individuality, his desire is expanded into being not only the desire of this particular individual but also the desire of another.”²⁸

This is a reconstruction of the way in which others *appear* in our world, viz., as embodied persons demanding mutual acknowledgment. We can reconstruct this appearance on several levels. At one level, we have a Hobbesian world of competing desires; the other person *can* serve only as

means/ends view of things.

²⁷ Hegel, *Enzyklopädie*, § 431. Zusatz.

²⁸ *Ibid.*, § 435. Zusatz.

another instrumentality in my world, as having no intrinsic worth. But that is to make the relations with others only a contingent one; we do not necessarily need the other. However, we actually do; we demand acknowledgment from the other. If I am the only non-instrumental value in my world, then my perception of another as holding the same view of the world (i.e., of being from his or her point of view the only non-instrumental value in the world — and he or she is perceived as living in the same world as mine) demands that we seek to abolish that other viewpoint, that the other person acknowledge me as the only non-instrumental value. At the level of desire, the contradiction between these competing claims cannot be resolved ethically, for there is no language in which an ethical solution could be framed. At best, we might strike an equilibrium, refusing acknowledgment to each other but coexisting. This coexistence, however, would and could be only an unstable one; there would be nothing except mutual threats to hold it in force. Even a Hobbesian sovereign to which we might cede our rights to independent self-determination would not work, for I could never (given the structure of desire) actually cede my right; I could only pretend to do so and wait for the right moment to reassert myself. In any event, an organization of life along Hobbesian lines could never allow for anything more than a non-intrinsic connection between people (a social, perhaps, but never a moral or political connection between people).

What we have at the level of 'desire' is a hypothetical situation which moves on two levels of 'goodness' but necessarily fails on its own to move on to a third and essential level. These first two levels would be: (1) *things* being good for a person and (2) a *person's* being good for others. This leads to the conflict which can only be resolved by forcing one of the people to accept being made into an instrumentality (being good) for the other. One is left with a dialectic of master and slave unless some provision for *mutual* acknowledgment is made, and this is impossible at the level of desire.²⁹ The third step must be from one's being good for

²⁹ One can see another reason why Hegel would not accept social contract theory; it requires promises on the part of people and commitment to keep them, but that presupposes prior acceptance of the framework of morality. The notion of keeping a promise to another person or maintaining some kind of commitment to him or her is dependent on acknowledging that he or she is worth keeping promises to. It is significant that Hegel does not base his fundamental ethical considerations on acceptance of rules of any kind but on the more obscure (and perhaps more insightful) notion of the *quality of relationships* we have with others. Promises, commitment, and the like only make sense when the other is perceived as *deserving* of such commitment. For Hegel, then, the question will become, "under what sets of social and political conditions will this kind of acknowledgment be possible?" — for it is surely impossible in the state of nature and hence one could not get out of the state of nature by any contract, for the contract would presuppose some

others to a non-instrumentalist notion of one's goodness, of one's worth as an individual. Hegel calls this "universal self-consciousness": awareness of ourselves as sharing a world with others, of being an ingredient in a world of multiple perspectives, and of not having everything being good as a means to my own ends, i.e., awareness of ourselves as being non-instrumental goods and of others as being likewise so. Self-respect, which is the awareness of oneself as worthy of respect, is not enough; one must acknowledge the other as having an identical claim. Hegel creates an appealing imaginative fiction in which the slave, by hard work on things and by rationally transforming the world, gains this self-respect. The master, who has become dependent on the slave's work, must finally cede full acknowledgment to the slave. Both then mutually acknowledge each other as entities worthy of respect.³⁰ This is an appealing but not strictly necessary moment in the master/slave dialectic (although historically, this piece of imaginative fiction made a great impact on the imagination of at least one individual, namely, Karl Marx). This idea of universal self-consciousness translates into an awareness of reason, a set of objective (public), normative principles which both define and regulate our dealings with one another. The self posits itself as a *co-member*, as it were, of the moral world.³¹ The unity of self and world is thus integrated into a higher unity of *selves* and world. It is a higher unity in that it is a more *complex* unity than that merely of self and world. At that level, the subjectivity of the other person makes only a problematic appearance, for it can appear only as the object of desire. The stage of universal self-consciousness, however, is the stage where each acknowledges the subjectivity of the other, that is, the other's status as a person, not merely as simply one more object of desire. It is in fact the conceptual instability of the perception of each as object of desire and as self-conscious person that propels the move to the higher unity. In the dual structures (two people, A and B) of the higher unity, A is conscious of himself as being perceived by a person (B) conscious of himself as perceiving a person (A) conscious of (B's) perceiv-

kind of social and political order in order to be intelligible.

³⁰ This strictly speaking may not be true as a literal reading of the text. Rather, the move to mutual respect is the only way out of the dialectic of Master and Slave. Unless this move to mutual acknowledgment is made, the dialectic of master and Slave remains like that of the "bad infinite" in the *Science of Logic*. It oscillates from one to the other without ever resolving the contradiction. I have discussed Hegel's conception of the bad infinite in "Hegel's Philosophy of Mathematics". Cf. footnote 1.

³¹ Cf. Hegel's "Self-contained Individuals Associated as a Community of Animals," *The Phenomenology of Mind* trans. J. B. Baillie (London: Allen and Unwin, 1966), pp. 417-38; *Phänomenologie des Geistes* (Hamburg: Felix Meiner, 1952), pp. 285-300; the better translation is that by A. V. Miller, *The Phenomenology of Spirit* (Oxford: Oxford University Press, 1977), pp. 237-51.

ing him and vice versa. More important, though, than this complex structure of mutually interposed perceptions and self-perceptions is the higher unity of multiple people sharing a common world. (In this way, incidentally, Hegel can explain how the Kantian concept of respect for a person as a person is possible without having to invoke Kant's noumenal/phenomenal distinction).

This conception of "universal self-consciousness" is the forerunner to the Hegelian conception of the common good. The mutual acknowledgment of each other as worthy of respect is possible only within this higher unity. The content of this higher unity will be, as we will see, constituted in part by the ethos of a society, its "ethical life" or *Sittlichkeit*. This makes up a common good: a unity which each constitutes that is higher, but which does not submerge the claims of individuality. The move to a higher level is a move to a true object of the will, to true freedom. At the level of desire, the will does not yet have its fully proper objects; the unity of itself and the world is incomplete. This higher unity on its own, however, cannot give any *content* to the will; that will be the reason for the move into the doctrine of *Sittlichkeit*.

3. From Mores to Social Categories

In the *Philosophy of Right*, Hegel gives an account of a form of Kantian moral theory in a section labeled "Morality". There he argues that some version of Kantian morality must be assumed to explain how it would be possible for us to know the difference between right and wrong (it is the successor to the section on "Abstract Right"). As Hegel reinterprets it, the Kantian theory argues successfully that the will must be free in order for morality to make any sense — indeed for there to be any sense to the concepts of right and wrong — but it cannot provide any objects of the will. The will, in merely willing its own universality in the form of rules, is left at the level of an empty formalism. The failure of the level of discourse in "Morality" is the impetus for Hegel's move into what he calls *Sittlichkeit*. There is no single term in English which adequately renders what Hegel means by this. The meaning, as Hegel takes it, includes the mores, ethos, and conventional morality of a particular society. One of his theses is that the content of individual morality must in some sense be derived from the mores, the ethos, and the conventions of the society and culture of which the individual is a part. We must now look at his arguments for this claim, what he thinks is entailed by it, and how he understands its force.

The mores or ethos of a culture make up for Hegel the concrete moral world, the *Idea*. Hegel is not arguing for any simple-minded acceptance of every part of one's culture's ethos, nor is his thesis necessarily a conservative one. In order to understand it, one must set it against what I take to be

Hegel's critique of the concept of moral autonomy, where autonomy is interpreted as *individual* self-legislation. If this is taken as meaning that the individual is the ultimate source and authority of his or her moral principles, and those principles are binding on him or her only if he or she chooses and/or accepts them, then, so Hegel argues, morality will turn out to be a paradoxical affair. Any attempt to describe our moral lives — i.e., our moral world — in such terms will contradict the basic concept of morality developed in the section of Masters and Slaves, viz., that we are answerable to objective demands whether or not we choose them. If the individual is to be morally autonomous in this sense, then ultimately something like his or her own conscience must be the final arbiter of what is right or wrong. This is, however, inconsistent with any adequate concept of moral objectivity. Hegel argues, "conscience is therefore subject to the judgment of its truth or falsity, and when it appeals only to itself for a decision, it is directly at variance with what it wishes to be, namely, the rule for a mode of conduct which is rational, absolutely valid (*an und für sich gültigen*) and universal."¹² One requires *Sittlichkeit* to explain how the *objectivity* of morality is compatible with the *autonomy* of the person. At the level of discourse of "Morality", one cannot distinguish one's private convictions from what is objectively morally good, yet the two are clearly distinct notions. As Hegel would say, the *subjectivity* of personal conviction is not enough to confer a *moral* status on one's principles; one must go beyond one's subjectivity to a notion of public, shared principles. This distinction can only be made if one brings in an understanding of accepted roles and practices. One cannot, e.g., understand the moral claims of being a parent without some understanding of the *role* of the family in one's culture. One must look to the cultural world for concrete content for one's moral judgments.

However, why must these principles be the *actual* ones of a particular culture? Hegel's appeal to convention seems to have at least two components to it which he called the *moral* and the *interpretive* components. The moral component in the appeal to the mores of a culture rests on its being an appeal to a *moral consensus*. One is *prima facie* morally obligated, so the Hegelian thesis might be put, to give pride of place to the moral principles of one's culture rather than to one's own principles should they conflict. One has an obligation to act according to objective principles; since one cannot always be sure that one's own intuitions about those principles are correct, one has an obligation to check them against the judgments of others. Since the mores of a culture are the embodiment of others' judgments, one is therefore obligated to give pride of place to those

¹² Hegel, *Philosophy of Right*, § 137.

mores. Hence, the appeal to moral consensus is not merely a simple-minded appeal to majoritarian feelings about what is right. It is an appeal to a content larger than one's subjectivity to provide a test of one's convictions.

The appeal to mores also has an *interpretive* component. In part, this was already alluded to by speaking of the moral necessity of going beyond the individual's merely private convictions. In order to understand a moral principle, such as 'give due concern to the welfare of others', one must appeal to the concrete institutions, roles, and mores of one's culture: "Because every action explicitly calls for a particular content and a specific end, while duty as an abstraction entails nothing of the kind, the question arises: what is my duty?"³³ I cannot understand what it means in this case to give due (not exaggerated, not too underplayed) concern to others without an appeal to the mores of my culture. To know what one *ought* to do, one must look to the way things *are* done. To give due concern to, e.g., a grieving friend will be different from giving it to a complete stranger. It is not, moreover, simply a matter of making the correct conventional gestures to express some general moral principle; it is to do what in specific *counts* as 'giving due concern'. Thus, Hegel claims, "an immanent and consistent (*konsequente*) doctrine of duties can be nothing except the development of the relationships (*Verhältnisse*) which are necessitated through the Idea of freedom and are therefore *actual* in their entirety, to wit in the state."³⁴

The moral world (the Idea) is a complex set of principles, rights, and duties which are like a "second nature"³⁵ to the individuals living within it. It stands to the individual as an intersubjective, shared set of background principles which constitute the ethical *world* for that individual. Moreover this need not be a strictly conservative thesis, as if Hegel were saying that all conventional morality is fine as it stands or that one always has an obligation to obey and uphold all the moral conventions of one's culture, however grounded in vicious prejudice they might be. Moral argument and debate, so the thesis could be taken to mean, always proceeds within the ambit of a presupposed moral world, of a set of shared convictions. The arguments of reform will almost always turn on alleged inconsistencies *within* a moral framework, rather than being attacks on it from without.³⁶

³³ Ibid., § 134.

³⁴ Ibid., § 148.

³⁵ Ibid., § 151.

³⁶ For example, a vegetarian might object to the commonplace eating of animals within his or her culture by first appealing to accepted norms of not inflicting unnecessary pain and then arguing that it is therefore illegitimate to inflict such pain on sentient beings such as

Nonetheless, Hegel thinks that a *mere* appeal to convention is not enough. One must have some means of evaluation of the goodness and rightness of convention beyond an appeal to consistency. He may be seen to have two proposals for doing this. First, as the “integration” (*Aufhebung*) of both “Abstract Right” and “Morality”, it must preserve the general claims of those domains. Where it can be shown that a conventional understanding flouts, e.g., the right to liberty that people have by virtue of being persons, or denigrates the notion of moral autonomy, then it is *prima facie* unjustified. The levels of “Abstract Right” and “Morality” offer *general* bases for criticism of any given conventional ordering, and it is always open for one to argue that alternative social arrangements might be better strategies for realizing these general values than existing conventions. This kind of appeal will itself involve an appeal to mores, but it is more than a mere appeal to make the existing conventions consistent; it involves a substantive appeal to rights and liberties, however general that appeal might be.

The second proposal is far more ambitious and involves what can be called the construction of *social and political categories*. Hegel himself never uses the term, but there is a definite set of concepts in his work which can be so labeled.¹⁷ A social category (I shall use this term generally to include both social and political unities) expresses a certain type of *unity* between people; it is an explanation of how it would be possible that people are bound together in the moral world (the Idea) in certain basic ways which would realize basic ethical values, such as respect for individual dignity and freedom, along with promoting human flourishing. There are of course many different ways in which people in any society are joined with others: churches, clubs, schools, associations, political parties and so on. These also (of course) vary from society to society. In calling something a social *category*, however, one is referring to some *basic* type of unity, which explains how the realization of basic moral ideals would be possible. It is clear that Hegel thinks that there are such basic types of unity between people. He speaks of the “ethical order” (*das Sittliche*) as “the system of these determinations of the Idea which constitute its *rationality*.”¹⁸ The system’s “moments are those ethical powers which regulate the life of individuals.”¹⁹ Individuals are the “accidents” of this sub-

cows or pigs. Conventions can come under attack from the standpoint of other conventions.

¹⁷ This imputation of social categories to Hegel’s theory has been made by Klaus Hartmann. I take the basic idea from his writings on it. Cf. his “Hegel: A Non-Metaphysical Reading,” *Hegel: A Collection of Critical Essays*, ed. Alisdair MacIntyre (New Jersey: Doubleday, 1972), pp. 101–24.

¹⁸ Hegel, *Philosophy of Right*, § 145.

¹⁹ *Ibid.*

stance, “and it is in individuals that these powers have their representation (*Vorstellung*), their form of appearance (*erscheinende Gestalt*) and actuality.”⁴⁰ In distinction from some humdrum empirical classification, a social *category* then is an expression of a basic form of unity among people — a structure of mutual acknowledgment — in which various moral principles (rights, duties, and virtues) are embodied and which explains their possibility. Hegel calls it “ethical substance”.⁴¹ It is a *category* in the sense that it is a basic type of union for that culture and serves to explain the possibility of the realization of ethical ideals in that culture. Such categories are both the result of human interaction (they have their “form of appearance and actuality” in individuals) and are independent of individuals in that the rights, roles, duties, and virtues found in them are independent of the individuals choosing them.⁴² For Hegel there are three such social categories: the family, civil society, and the state.

These social categories not only provide content to general moral principles; they are also “the living good.”⁴³ The “substance” (social category) of such moral objects, of *Sittlichkeit*, “is the good, i.e., the objective is filled with subjectivity.”⁴⁴ In the duties, rights, goods, and virtues intrinsic to such unions, “the individual finds his liberation.”⁴⁵ The articulation of such categories is thus the articulation of the Idea, of the moral world of a culture.

The social categories are the basic types of concrete acknowledgment (the Hegelian *Anerkennung*) between persons. They express the basic unities of selves and world in which members of a culture can and do acknowledge one another. A doctrine of social categories need not be (as Hegel’s ethics is often popularly taken to be) a doctrine of totalitarian fusion of individuals into some organic whole, nor need it be a doctrine of some social or political authority compelling individuals to realize their true or non-corrupt nature. Rather, as a theory of the basic types of concrete acknowledgments between individuals, it is a doctrine of the basic types of *ethical relationships* we may entertain with others. Hegel thus stays true to his program; rather than offer an ethical theory in terms of rules and principles, he is concerned to offer a theory of ethical relationships which explains the possibility of these concrete rules and principles. These ethical relationships are the fully proper objects of the will. The theory thus takes a much different form than it would were it a theory of

⁴⁰ Ibid.

⁴¹ Ibid., § 146.

⁴² Ibid.

⁴³ Ibid., § 142.

⁴⁴ Ibid., § 144, addition.

⁴⁵ Ibid., § 149.

the former type. It does not present, e.g., a basic principle in the form of a rule (like the categorical imperative) and then deduce other rules from it; rather, it presents an articulation of the types of social union (social categories) which provide the will with its proper objects.

More importantly, the social categories explain how human self-determination may be concretely embodied in types of social union, of reciprocal acknowledgment; the major Hegelian thesis is that these types of social union are therefore the concrete realizations of freedom. For Hegel, there is no such thing as abstract freedom. Our choices and our actions always appear against a given concrete background of desires and wants and values.⁴⁶ Freedom arises not when one does what one wants but when one can *will* it. In Hegel's words, "the impulse should be the rational system of the determinations of the will (*Willensbestimmung*)."⁴⁷ But for our various motivations (our desires, inclinations, etc.) to become subject to such criticism, there must exist a background of intersubjective, shared standards; without this social background of mores and conventions, the freedom of the will could at best be sheer arbitrariness (*Willkür*)⁴⁸ and not true freedom. Without the types of social union out of which flow these various principles, this shared context of choice could not exist. Hence, so Hegel argues, these social unions are far from being restrictions on self-determination; they are the very soul of self-determination. As deployed in a philosophical theory, they explain how self-determination is concretely possible.⁴⁹

⁴⁶ Ibid., §§ 15-19.

⁴⁷ Ibid., § 19.

⁴⁸ Ibid., § 15.

⁴⁹ Hegel's point might perhaps be portrayed in a different way. The relation of the general claims of "Abstract Right" and "Morality" to particular moral and political choices is one mediated by the institutions and practices of the culture. A doctrine of social categories is in part the attempt to present how these abstract claims involving general obligations to avoid interferences and to provide benefits may be concretely phrased. They provide, that is, the interpretive framework by which concrete conceptions of these general claims may be articulated and concrete political strategies for realizing these claims may be worked out. A philosophical theory of social categories is in part an evaluation of how well the basic types of union in a given society offer rationally construable conceptions of what is right and good. How well do they embody abstract rights of personhood? How much do they contribute to human flourishing? How are they consistent with one another? A theory of social categories is not a mere enumeration of the ways in which one's own culture conceives of the proper organization of the world of value. It is an explanation of how those general conceptions are *possible* from within the standpoint of a concrete culture.

What, however, are Hegel's criteria for deciding on the relative goodness of the specific conceptions of the right and the good found in the basic types of social union? On the one hand, any argument for the goodness of one type of conception over another must itself involve appeal to mores. It must involve appeal to accepted understandings of human motivation and so on. That is, it must be circular in the sense that it must use the culture's own concepts to criticize itself. This must be the sense of Hegel's well-known claim, "whatever happens, every individual is a child of his own times; so philosophy too is its own time apprehended in thoughts. It is just as absurd to fancy that a philosophy can transcend its contemporary world as it is to fancy that an individual can overleap his own age, jump over *Rhodes*."⁵⁰ The spirit (*Geist*) of any culture consists of the ideas, norms, values, and ideals in terms of which the culture understands itself and interprets itself to itself — what Hegel calls the self-consciousness of a culture. This includes things such as views about the proper relationship between men and women, ideals about the role of parents within the society, the place of a family in the larger social context, whether one should tip in restaurants, how one should behave towards business associates, when it is appropriate to deceive — the list obviously can go on forever. Without a doctrine of *Sittlichkeit*, no content can be given to the notion of free willing, for no objects can be specified for the will outside of these kinds of relationships.

However, each type of social category is an expression of a basic kind of unity among individuals which gives content to their willing. A theory of social categories explains the possibility of the very general demands of "abstract right" and "morality" within a specific cultural setting. If Hegel had only a doctrine of *Sittlichkeit*, he would indeed be the cultural relativist that he is often popularly taken to be. His theory would come down to the claim that the content of willing comes from convention, and that no appeal to anything other than convention can be made. In one way, this is of course certainly a part of his claim. The theory of social categories offers, however, much more than that; it offers a kind of rational reconstruction of a culture, explaining what kinds of social union there must be if the culture is to recognize and embody certain abstract ideals. (Ultimately, it must also show what kinds of conceptual relationships exist between these kinds of social unions. Hegel's idea was that each category was the integration and unification of the categories preceding it, but to go any deeper into that part of his dialectic would be the subject of another paper.) This doctrine of social unions makes up the true core of Hegel's

⁵⁰ Hegel, *Philosophy of Right*, p. 11; *Grundlinien der philosophie des Rechts*, (Hamburg: Felix Meiner, 1962), p. 16.

theory of freedom.⁵¹ They form the true objects of the will; only from within such social unions can the individual find his or her freedom. Hegel's theory is, as was said, not a rule-oriented ethic but a theory of the kinds of ethical relationships that we have with each other. The social unions are the basic types of such relationships. They supply the will with its proper objects, and the theory of such categories is thus a theory of concrete freedom itself.

4. From the State Based on Need to the State

Probably no worse things have been said about Hegel's theory than about his theory of the state. If nothing else, it might be thought that this reading of Hegel in terms of a doctrine of social categories would lead to an unacceptable theory of the individual's relation to the state, where perhaps the state determines the proper objects of the will. However, I think that in light of the preceding reading of Hegel, we may be in a position to better appreciate what is actually valuable in his theory of the state. We can see this by reflecting in a general way on what type of social union the state is and why Hegel thinks it is necessary to distinguish the *Notstaat*, the state based on need (what Hegel also calls the *Verstandesstaat*, the state as the "understanding" conceives it) which appears in civil society, from the state proper.

The rationale for this transition may not, however, be immediately apparent. What, after all, does the category of the state explain that has not already been explained in the category of civil society? One has a fairly well-articulated conception of the state (the *Notstaat*, the state based on need) worked out in the section on civil society.⁵² There Hegel argues that in the kind of market society which he claims would be found at the level of civil society, it would be necessary to construct at least a quasi-state apparatus in order to protect the orderly workings of the market and so on.⁵³ One even finds in the *Philosophy of Right* several sections devoted to the system of law and administration which would be found in the state based on need. Civil society is a social union based on the pursuit of self-interest; the glue which holds this type of union together is the belief on the part of each that this arrangement is the best workable alter-

⁵¹ Using a term from John Rawls, we can call these *social unions* although we will not be using it exactly in his sense. Cf. John Rawls, *A Theory of Justice*, (Cambridge: Harvard University Press, 1971), § 79, "The Idea of Social Union", pp. 528-29.

⁵² Cf. *Philosophy of Right*, § 183.

⁵³ For an excellent account and criticism of Hegel's conception of the *Notstaat*, cf. Günther Maluschke, *Philosophische Grundlagen des Verfassungsstaates* (Freiburg: Karl Alber, 1983), pp. 237-47.

native for pursuing his or her own self-interest. The *Notstaat* explains the possibility of this type of union (it is the result of considerations about what would be necessary for the securing of a basis for legitimate expectations and the like). Therefore, it is not, at least in Hegel's own eyes, incomplete in any simple or straightforward way.

Why then do we need yet a further category? One may (and many commentators have) indeed suspect a more sinister motivation for such a transition, viz., a desire for some all-encompassing organic nation-state with authoritarian (if not totalitarian) overtones. Some of Hegel's text certainly warrants such suspicion; for example, Hegel says of the state, "On the other hand, this final end has supreme right against the individual, whose supreme duty is to be a member of the state."⁵⁴ Those unfriendly to Hegel will be able to cite many other similar passages.

I have proposed that we see Hegel as rejecting both the Kantian doctrine of the freedom of the will as residing in the will's ability to give itself its own rule and the Kantian identification of the respect for persons with the idea of respecting the choices of others. The rationale for this would seem to be that once one has made the latter identification, one will be impelled to see the state as the result of some kind of contract or set of choices that individuals make. This, more than Hegel's view, has its sinister side: if the state is the result of a contract (and we think of contracts as bargains for mutual self-interest), then presumably people will want to include those in the contract that in some sense either provide some kind of benefit to them or are simply too dangerous otherwise to exclude. On that view, the state must become a kind of club which excludes certain people from membership. This will leave the powerless, the handicapped — in short, those who neither provide a benefit nor pose a threat — without protection. At best, one would end up with a state based on mutual protection, which is exactly what the *Notstaat* is. But the *Notstaat*'s justification lies in its claim to universality. As any agency set up by individuals in society, however, it must of necessity be a particular organ, most likely an organ by which one group can press its interests on others who are too weak to resist. The contradiction which Hegel thinks impels the move from the doctrine of civil society with its version of the state — the "state based on need" — is the contradiction between the *Notstaat*'s *claim* to universality and the fact that it can only be the organ of one group of interests (its particularity).⁵⁵

⁵⁴ Hegel, *Philosophy of Right*, § 258.

⁵⁵ I think that one could read this as an anticipation (and rebuttal) of Marx's later criticism of Hegel's theory of the state. To go any further into this idea, alas, would exceed the bounds of this paper.

The transition can be seen to be in part one from a social union whose focus is *economic* to one whose focus is *political*, that is, from the concept of civil society as a set of people held together by the pursuit of the self interest of each, with the *Notstaat* arising in order to maintain the orderliness necessary to such an arrangement, to the notion of a form of social union in which a *common good*, which is not simply the sum of various interests in society, can be recognized. In practice, of course, economic and political spheres intermesh, but it is the conceptual distinction between the two which Hegel may be seen to be making. The economic sphere is bonded together by market relationships, by the belief on the part of each that this arrangement furthers his or her own interests. The political sphere is a different type of union; in it people are not merely means to an end but are something like fellow actors in a political drama. Our relation to others in an economic sense is contingent (their place could in theory be taken by machines, for there is no intrinsic reference to *them* but only to their products or capabilities for production), but our relation to others in a political sense is not contingent in that way. Moreover, we could easily have (and there do in fact exist) states guaranteeing certain kinds of economic liberty while simultaneously denying political liberty. Economic rights and civil rights (those defining the extent of political participation) are not necessarily coextensive.

Hegel stresses this point in a passage immediately following the allegedly sinister one just cited: "If the state is confused with civil society, and if its specific end is laid down as the security and protection of property and personal freedom, then the interest of the individuals as such becomes the ultimate end of their association; and it follows that membership of the state is something optional. But the state's relation to the individual is quite different from this."⁵⁶ What exactly is this relation? Hegel's answer — "*Unification* pure and simple is the true content and aim of the individual, and the individual's destiny (*Bestimmung*) is the living of universal life."⁵⁷ — may be seen as just the kind of thing which I am claiming that he need not say. He might seem to be interpreting the *political union* of individuals as a kind of *fusion*, a reassertion of the type of unity peculiar perhaps to the family. However, there is no logical reason in his system which would compel him to do that. His major point is only that a political union is different from an economic one, not that it need be a fusion of some sort, and that political union explains something which social union does not.

⁵⁶ Hegel, *Philosophy of Rights*, § 258.

⁵⁷ *Ibid.*

What kind of union is it then, and what does it explain? A constitution is the locus of the authority which is the 'glue' of political union, a union in which some individuals gain authority (political power) over other individuals, not through market relations but through relations of justified authority. Such relations are constituted by individuals accepting certain rules and principles which give others the right to, e.g., make binding laws for them (speaking of the constitution as "the universal," Hegel says that it "does not prevail or achieve completion except along with particular knowing and willing"⁵⁸). The constitution both creates such relations and embodies them. It creates them insofar as it spells them out; it embodies, however, the accepted political relations in a society.⁵⁹ The (constitutional) "state is the actuality of concrete freedom"⁶⁰; the constitution thus embodies the concrete ethical precepts of a specific way in which the Idea, the moral world, is articulated.⁶¹ It is indeed accepted as having normative force for the society for which it is the "determinate being", as it were, of authority. It embodies the ethos of a particular culture, the ways in which the abstract but nonetheless objective principles of abstract right gain a concrete embodiment. However these principles may be interpreted, they must find their place in the constitution of a country.

We may read then the passage on unification as the destiny of the individual as being that it is in the state that we have a full sense of the common good. A non-Hegelian example might help to clarify this a bit. We might distinguish contract, partnership, and the pursuit of a common good. A contract would be a bargain between mutually self-interested individuals; it expresses "Abstract Right", the sense of liberal individuality. A partnership would be a joint undertaking between self-interested individuals with both the burdens and benefits to be distributed among them. One would find both partnerships and contracts in civil society, with partnerships entering at the level of the corporation and perhaps also at the level of the "state based on need". A pursuit of the common good, however, is more than a contract or a partnership. In it, people connect with a unity higher than that constituted by mutual self-interest. That unity of people which gives content to their ideals of mutual acknowledgment would be the concrete form of the universal self-consciousness of the "phenomenology". The common good is the systematic unity of the ideals of a society, the *Geist* of a given order. This *Geist* constitutes the way in which people understand themselves, understand the proper relations

⁵⁸ Ibid., § 260.

⁵⁹ Ibid., § 274.

⁶⁰ Ibid., § 260.

⁶¹ Cf. Ibid., §§ 273-74.

between various kinds of people — in short, the way in which the given culture is conscious to itself of itself. The freedom of the will consists in its willing the objects proper to it, and Hegel's theory of social unions is a categorical explanation of how it would be possible to have freedom in this sense. The principles found in the unions themselves constitute the concrete objects of volition which give the will its freedom. Moreover, as products of the practical mind itself, they are not alien to the will. One wills the common good when one wills according to the ideals of these unions, and these unions can only be understood in terms of the ethos and mores of a given culture.

There is an ambiguity in speaking of the common good as something "higher". Space prevents any more than a brief sketch of how this sense of higher could be taken (to go into any great detail here would require another paper). The common good might be higher in the sense that its principles would always take priority over the principles that preceded it. Thus, the state would be a higher unity in this sense if, in any conflicts with principles arising out of "Abstract Right" or "The Family" or "Civil Society", the principles appropriate to the state would take priority. This interpretation would certainly be consistent with the traditional way of reading Hegel, and, it must be admitted, would also find some support in Hegel's texts. The other way of taking it (the way which I would endorse) would be to see the common good as higher in the sense that it offers new content for willing but does not necessarily take precedence over the previous principles; the previous rights and duties are "preserved" in the higher unity. This is one way of taking the Hegelian concept of "*Aufhebung*", which I have rendered as "integration". The higher unity integrates the principles found at the lower level and supplies new content on its own. The principles at the lower level acquire new patterns of meaning by being integrated into the higher conception of the common good, but they do not vanish, nor do they necessarily lose in any conflicts with principles appropriate to the state.

This is, I think, a charitable reading of Hegel's theory of the state. It allows us to locate it within Hegelian ethical theory as it has been reconstructed here, and it allows us to see Hegel's alternative to Kantian theories of the state as consisting of more than merely an organic or non-individualist theory of the state in contrast to the social contract view to which Kantians (including Kant himself) were and are still drawn. This is only the outlines of such a reading of Hegel's theory. Much more needs to be said, but if what has been presented here is plausible, then perhaps it will be worth saying.⁶²

⁶² Research for this paper was supported by a grant from the Alexander von Humboldt Foundation. I would also like to thank Klaus Hartmann and Norbert Hornstein for their helpful comments on earlier versions of this paper.

[3]

Hegel and Institutional Rationality

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“... die Philosophie ist etwas Einsames.”
Hegel, 1807¹

1.

“Right is concerned with freedom,” Hegel notes in the remark to § 215 in his *Philosophy of Right*, and freedom is “the worthiest and most sacred possession of man.” In his account of the nature of this all-important freedom, Hegel makes two well-known claims, and the problem I want to discuss is an obvious consequence of trying to think the two claims together.

First, according to Hegel, philosophy is not concerned with the mere concept of such freedom but with the concept and its “actuality” (*Wirklichkeit*). In his systematic language, this means that a philosophy of freedom is neither a rational analysis of the pure concept of freedom, nor some a priori formulation of an ideal, of what simply “ought to be.” It is notoriously difficult to know what this claim means. But at the very least this account of actualized and not merely ideal freedom means that freedom consists in participation in various, *historically actual* (and that means, ultimately, distinctly modern, European) institutions. Anything other than this is only an incomplete, partially realized freedom. Perhaps the most typical Hegelian claim about such actual or “objective” freedom is from his “Introduction” to the *Lectures on the Philosophy of World History*.

Every individual has his station in society, and he is fully aware of what constitutes a right and honorable course of action. If someone declares that, in ordinary private existence, it is not at all easy to decide what is right and good, and if he considers that moral excellence consists in finding it extremely difficult to be moral and in having all kinds of scruples about being so, we can only attribute this to his evil or malevolent will which is looking for excuses to escape its duties; for it is by no means hard to recognize what his duties are. (*LPWH*, 80)

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This is the foundation for the even more infamous claims later in the "Introduction" to the *Lectures*, that "Only in the state does man have rational existence" (LPWH, 94) and in his unpublished 1818–19 *Rechtsphilosophie* lectures that it is "only in the state that the concept of freedom comes to its self-sufficient existence" (VPR 18, 222). Most speculatively, "The divine principle in the state is the Idea made manifest on earth" (LPWH, 95).

But why would being a family member or a bourgeois or a citizen count as being free? The appearance of the adjective "rational" in that last claim about "rational existence" and the exactly parallel formulations about reason on the one hand and freedom in its self-sufficient existence on the other, already signal the second claim I want to start from. It is not the case that any modern institution can be said to represent the actualization of freedom, and so only a few of one's social roles can be said to embody "actual" ethical duties. The principle of this limitation is also clear enough. The content of a free life may derive from carrying out various modern social roles, but this is *because* the execution of those roles can be said to be *rational*. Already in the remark to § 3 of *The Philosophy of Right*, Hegel notes,

a determination of right may be shown to be entirely grounded in and consistent with the prevailing circumstances and existing legal institutions, yet it may be contrary to right [*unrechtlich*] and irrational in and for itself, like numerous determinations of Roman civil law.

Thus, Hegel's rationality condition clearly serves a traditional function of appeals to reason. He obviously means that there can be historical periods where the major actual institutions have, as Hegel says, a "hollow, spiritless, and unsettled existence," when finding one's duty in what is socially required would be a mistake, however indeterminate and unsatisfying the "inner subjective world" retreated to would be in such cases.² So, when, in the *Lectures on the Philosophy of World History*, Hegel again counts as objective freedom a citizen's functioning in the role of a citizen of the state, he again insists that this is so under a clear condition: when this "substantial freedom" can be counted as an expression of "the reason which is implicit in the will [*die an sich seiende Vernunft des Willens*]" and which develops itself in the state" (VPG, 135/104). By the time of the Berlin version of the *Encyclopedia*, Hegel was well aware of the charge that his insistence on genuinely actualized freedom merely sanctified the historically positive, and he expressed amazement that anyone could have so understood him. "[F]or who is not acute enough to see a great deal in his own surroundings which is really far from being as it ought to be?" (EL § 6).

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So "conforming to right" and "being rational in and for itself" and participating in *certain* institutions, all amount to the same thing, and the same thing they amount to is the state of actual freedom. Having practical reasons is, for the subject, following institutional rules, and the quality of those reasons, let us say, is a function of the institution's objective rational status. Hegel's shift here towards historically actual *social conditions* as satisfying such a condition of rationality, and away from an individual's possession of a *causal power*, his insistence that freedom must be understood as a collective human achievement is a momentous one (especially for the left Hegelian tradition and for modern European history) but quite complicated in itself.³ The point we need to focus on here is that, like Rousseau and Kant and Fichte, when Hegel points to the key condition that would enable my identification with my own deeds, my being able to understand them as produced by me, not by the will of another, or as necessitated, he also points to the role of practical reason. He is, in other words, a member in good standing of that camp of post-Kantian philosophy that understands freedom as rational agency. What I need to be able to do in order to acknowledge a deed as my own, to stand behind it, to take on the burden of responsibility for it and so "see myself" in it is in some way to be able to justify it, understand my opting for it as rule-governed, and so as the appropriate deed and not some other.⁴ Where Hegel veers off (or veers back to Rousseau, whose position on this issue Hegel did not fully appreciate) is in his linking *being in some social roles* to the *realization of reason* in both the "subjective" and "objective" sense noted above.⁵ Whatever else he means by this, he must mean thereby that "having justifiable reasons" is going to look a lot different than we might expect, since it won't only be a matter of having maxims of a certain form or beliefs about the good, and the role of practical and moral reasoning will not be a matter of having applied a methodology or a test for universalizability. Reasoning and coming to have reasons will, it appears, have a great deal more to do with participation in social practices, and the sorts of reasons relevant to the achievement of genuine freedom, full rational agency, will depend on the character of those practices and institutions.

So we appear to have a "my station, my duties" or social role theory of right conduct, but one that sees the fulfillment of those *socially* defined roles as the actualization of *individual* human freedom (already somewhat of a paradox) and that counts one's being in those roles as such freedom because the performance of such duties and functions can be said to be rational. And of course the question is, rational in what sense? Or at least that is the question I would like to raise here.

Already we can see the problem. Hegelian practical rationality will not amount to preference maximizing or adopting the

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moral standpoint of universality but, as we now might say, after the influence of Wittgenstein and Habermas, *proper rule-following*, where the rules are rules regulating social practices and institutions. (I should note that in all cases where I invoke the notion of rule following, I do not mean anything like the conscious application of a criterion. There is of course a large controversy about the right way to describe being normatively minded in these cases that I shall have to ignore in what follows. What is minimally important for Hegel's position is some sort of a distinction between *subscribing to a norm* and just *being* norm-governed, going on in the appropriate way. Hegel's claims about subjective rationality mean that he requires some version of the former.) It is in this sense that Catholic priests can be said to have reasons to be celibate (in the "because that is what they are" sense), and male members of families in certain societies have reasons to seek revenge against insults to honor and so on. If Hegel's argument is successful, such rule-following considerations can be counted as justifications and are the paradigmatic case of practical justification. But contrary to other such rule-following accounts (like Wittgenstein's), Hegel clearly wants to defend not only claims like,

- (i) "It is in participating in Institution X, in following its rules, that I am being practically rational, or can be said to have justifications for what I do,"

but he also quite obviously intends to avoid the relativistic implications associated with such a position and also defend the claim:

- (ii) "*Institution X* is itself rational, has an objectively rational form."

Now we tend intuitively to take that latter claim to mean,

- (ii') "It is rational for any individual to opt to participate in and sustain X,"

but as we have seen, Hegel seems to think that is only *qua* participant that I can be said to have practical reasons at all and that they can be said to get some sort of grip. He will famously deny that there is any way of settling what a putatively pre-institutional individual would rationally will. As we shall see, Hegel thinks sociality is "prior" to individuality, that it is only within and as a result of certain sorts of norm-governed societies that I could become a determinate individual at all. So (ii') cannot be the right gloss on (ii) and we are left wondering what (ii) could amount to?

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2.

There is one more Hegelian turn to this screw that we need before the issue can be stated in his terms. At times, Hegel can appear to treat this claim about the "substantial" rationality of modern institutions as essentially a conclusion of a metaphysical argument about the genuine, objective realization of finite spirit or as the end-point of the historical manifestation of this culmination of a developmental process (ultimately the developmental process that, on this reading, is what there is, being qua being). One can already detect this aspect in the "substantialization" of reason apparent in the passage quoted above from the *History* lectures: "*the Reason*" (*die Vernunft*) which "develops itself" in the state. And there are of course scores of other passages where Hegel writes of "reason" doing this or that, or realizing itself in various ways, or appearing as this or that, and so forth. (See for example one of Griesheim's additions, "The state consists in the march of God in the world, and its basis is *the power of reason actualizing itself as will*" [VPR § 248].) On such a teleological view (stated very generally) a developmental process can be said to exhibit "the work of reason" because the process gradually does result in the living being or the social form becoming "what it truly is." The process has a logos; it is not arbitrary or shaped wholly by contingent and, in this sense, meaningless events.

There is no doubt that Hegel does seem to invoke some version of this ontological notion of truth and that he counts modern institutions as rational because they "exist in the truth," as such a conception of truth would have it. And his practical philosophy (or his claim that freedom just consists in acting out certain modern social roles, and these because such roles can be said to embody "the rational" in this metaphysical sense) appears to invoke this "substantialist" notion of reason. Consider § 145:

The fact that the ethical sphere is the system of these determinations of the Idea constitutes its rationality. In this way, the ethical sphere is freedom, or the will which has being in and for itself as objectivity, as a circle of necessity whose moments are the ethical powers which govern the lives of these individuals. In these individuals—who are accidental to them—these powers have their representation, phenomenal shape and actuality.

The *Zusatz* to this paragraph goes even further in stressing that such "determinations of the ethical" or these social roles "are the substantiality or universal essence of individuals" and that, therefore, these individuals are "mere accidents."

3.

However, by now, or at this point in the liberal-democratic re-appropriation of Hegel of the last thirty years or so, there is

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a fairly standard rejoinder to an exclusive concentration on passages like these. One points, quite rightly, to Hegel's clear insistence in the "Introduction" to *The Philosophy of Right* that acting rationally and, thereby, freely has a "subjective" as well as an "objective" side. This means that participating in some social function that can be shown to be a "necessary determination" of the Idea of freedom only satisfies *half* of the rationality requirement, however we ultimately decide to interpret what Hegel says about objective rationality. The subjective half is what Hegel calls "the right of the subject to find satisfaction in the action" (PR § 121). This principle is of the utmost importance in Hegel's philosophy, since it amounts to his interpretation of the philosophical significance of Christianity, and therewith is the foundation for his whole theory of the modern world. So, most famously, for the Greeks, "customs and habits are the form in which the right is willed and done" (VPG, 308/252) and "we may assert" of the Greeks "that they had no conscience; the habit of living for their fatherland without further reflection was the principle dominant among them" (VPG, 293/238).⁶ Greek ethical life, therefore, "is not yet absolutely free and not yet completed out of itself, not yet stimulated by itself" (VPG, 293/238). By contrast,

[T]he substance of spirit is freedom. From this we can infer that its end in the historical process is the freedom of the subject to follow its own conscience and morality, and to pursue and implement its own universal ends; it also implies that the subject has infinite value and that it must become conscious of its supremacy. The end of the world spirit is *realized* in substance through the freedom of each individual. (LPWH, 55)⁷

Further, it is not sufficient merely that subjects actually have some sort of implicit, subjective faith in the rectitude of their social and political forms of life, that they in fact subjectively assent. When he discusses the compatibility of this right to subjective particularity with a recognition of the universal claims of reason, he insists that in modern ethical life individuals both "direct their wills to a universal end" and also that they act "in conscious awareness of this end" (PR § 260); they "knowingly and willingly [*mit Wissen und Willen*] acknowledge this universal interest even as their own substantial spirit and actively pursue it as their ultimate end" (Ibid.). In just institutions, according to Hegel, "man must meet with his own reason" ("Seine Vernunft muß dem Menschen im Rechte entgegenkommen..." [PR, 14]).⁸

4.

So this brings us finally to the question at hand, what it means to say that certain modern institutions are *rational*, and

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now, especially, what it means to say that they are *subjectively*, not just objectively, rational; even more pointedly, what does Hegel mean when he says that individuals even affirm such a universal, or rational end "*knowingly*" (*mit Wissen*)?⁹

As noted above, it would be natural here to think of institutions as rational if they could be shown to be the *products of the rational will of individuals*, that under some hypothetical pre-institutional and ideal conditions, we can show that it would be rational to found, form, and sustain any such institution. This form of reasoning is most famous in the *exeundum e statu naturae* arguments in the modern contractarian defense of the state, but such a methodological individualism has become a staple of modern discussions about institutions and can almost be said to define methodology in several social sciences. Since in many such models either the genuine interest or the ideal sum of subjective preference satisfactions of the individual is at stake, it is presumed that such considerations are in fact often the subjective reasons on the basis of which subjects act and that, under conditions of even minimal enlightenment and nondistortion, could easily gain an even greater motivating force.

There are several Hegelian criticisms of this model of institutional rationality. Rehearsing them briefly will lead us to the positive question: If not this methodological individualism, or moral individualism, what does constitute institutional rationality for Hegel? I will group the objections together into two categories: Hegel's attack on the *abstractness* of the notion of the individual in many modern theories and his claims about *motivational* and alienation problems.

5.

Both criticisms rely on a claim about the priority of social relations to individual self-relations or to the results of individual choice. Individuality itself is dependent on social relations because such social relations are necessary for the development and maturation of determinate individuals in the first place. Hegel's point here is that the notions of a rational egoist, or individual preference maximizer, or of an individual conscience, are all extreme abstractions, idealized starting points so idealized that reliance on any result that issues from such thought experiments is quite misleading.

What Hegel ultimately wants to say here against such abstractness depends heavily on a very ambitious claim about the ontology of individuality, and so depends on his own distinct account of freedom as being-with-self-in-the-other (*bei sich Selbstsein im Anderen*). In social terms, he means to highlight an aspect of freedom, independence, and so individuality that is not conceived of as some abstract and unreal absence of all dependence but a kind of dependence by

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virtue of which genuine or actual independence could be achieved. (His best examples of this are friendship and love¹⁰; the intellectual ancestor is again Rousseau and Rousseau's argument that a "remarkable change in man" is necessary before true citizenship can be possible.)¹¹ But without ascending to such heights, it is clear enough what the arguments look like on the ground. Participation in a certain form of social life is *transformative* as well as instrumentally useful, and so there is too great a contrast between what an individual becomes by such participation and what he would have been without it for the pre-institution individual to serve as a standard.¹² Such social institutions are also originally *formative* of individual identities and so would be conditions for the possible development even of rational egoists and rational egoist "culture"; they cannot be viewed as the product, even ideally, of such individuals. And the institutions instrumentally necessary to protect and guarantee individual egoism or conscience-following cannot *themselves* be sustained effectively without relations of trust and solidarity that cannot be supported on considerations of individualist interest or individual conscience.¹³

Hegel even treats the genuinely normative claims for what he calls the "right" of subjectivity and individuality as products of a certain sort of ethical culture, as claims on others that cannot be understood or realized without there being in place a culture in which "others" come to be understood and respected in a certain way. (Thus, in a way typical of many such argument strategies in Hegel, it being "a product of reason" to come to regard others in such a way is not for this way to be the product of moral, especially, deductive reasoning. A claim about a certain sort of development, not deduction, bears the weight of the claim for rationality.) The general thesis is stated in the Addition to § 141, where Hegel claims that "the sphere of right and morality cannot exist independently [*für sich*]; they must have the ethical as their support and foundation [*das Sittliche zum Träger, zum Grundlage*]" (§ 141Z). Such considerations of rights, entitlements, and moral duty can be said to "get a grip" and so come to count as reasons for an individual to have what Hegel calls "motivating force" [*bewegende Kraft*] not as a product of pure practical reason alone, but only as components of actual "ethical being" (§ 142; *an dem sittlichen Sein*).

6.

Hegel's second main objection rests on considerations of motivation, how some consideration could come to count for me as a practical reason, how it could be said to "get a grip" on an individual and make sense as a reason for her. This tack is clearest in Hegel's rejection of the Kantian account of the "subjective side" of practical rationality or the Kantian claim

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that *pure* reason itself can be practical all by itself. This is so despite the many similarities with the Kantian position that have already emerged in Hegel's own account of freedom as rational self-determination or autonomy. But Kant believed that freedom and subjection to the moral law were "reciprocal" concepts, that an analysis of the concept of agency could reveal that conformity to the constraints of rationality constituted freedom, and since reason was unable to determine any substantive ends to be followed or substantive goods, subjection to such rationality could only mean subjection to the form of rationality itself. But conforming to the formal constraints of rationality can only mean conforming to the constraints of universal lawfulness, and when Kant interpreted *that* to mean conformity to the categorical imperative, *that* move started all the trouble.¹⁴ That is, conformity to such constraints can't in itself mean much more than a commitment to the universality claim inherent in claims to rationality—that anyone else in my situation would have such reasons to act—and not to the much stronger principle that conformity to the rationality constraint meant being able to will coherently that all others could have my maxim simultaneously.¹⁵ Since Kant had not established that extension, his own principle remained "empty."

Moreover, Kant appeared to abandon (after the *Groundwork*) a deductive attempt to establish what Hegel called the "actuality" of moral principles, that we were *actually* subject to such principles and could act on them. We need to be able to show not only that "this is what a purely rational practical will would will" but that we are unconditionally obligated to such results. Kant's ultimate case for that subjection came down to a mysterious claim about the *Faktum der Vernunft*, or something like the practical undeniability of freedom (the form of the undeniability being something like, as Kant puts it, "trying to prove with reason that there is no reason"), where such freedom is again analyzed as conformity to the constraints of rationality in Kant's dubiously extended (categorical imperative) sense. One could see, Hegel claimed, how little help such an account really provides in trying to understand the sort of "grip" on us the dictates of pure practical reason have by noting Kant's needing to call on so many and so various other "helping" motivations and habituations to make his point about the possibility of moral motivation for finite, sensible creatures like us. Considerations like respect as an incentive, the role of the highest good, especially the Postulates, the place of religion and the ethical commonwealth, revealed for Hegel the inconsistency (or what Hegel called the *Verstellen* or dissembling) of the Kantian position on morality. The insufficiency of such an account of pure reason being practical ought then to lead us to look elsewhere, to the ethical world that has become "second

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nature" in individual lives, for an account of what considerations of moral equality actually amount to, how they get a grip, and how they motivate individual allegiance.

Where then does all this leave us in trying to understand the subjective side of practical rationality in Hegel? Perhaps we could simply try to invoke positively what have emerged as required conditions for the actualization of freedom, as considerations for the subject, and so as what any rational (thereby free) subject must be presumed committed to. Here are two examples of how that might be done.

7.

Axel Honneth, in his recent attempt at what he calls a "reactualization" of Hegel's *Philosophy of Right*, agrees with Hegel that "the ideas of 'abstract right' and 'morality' are each insufficient descriptions of the condition of individual freedom in modernity,"¹⁶ and he coins a fine term to describe the state we are in as a result of this insufficiency; he calls it "suffering from indeterminacy." Modern agents can be said to be by and large committed to the right, truly authoritative modern norm, freedom, and so an equal entitlement to a free life, but suffer from the indeterminacy that the mere notion of freedom leaves us with. (As the twentieth century has made clear, libertarian, welfarist, socialist, and totalitarian projects all claim a commitment to the supreme principle of freedom.) Honneth invokes Hegel as having shown by far the most important condition for actual freedom: another's freedom and therewith necessarily the objective social conditions wherein subjects could properly experience another's freedom as condition of their own and so act as such social agents and as subjectively rational. Whereas Kant and Fichte understood the sphere of right as external relations among atomistic subjects, with the key issue the legitimacy of coercion, and with restrictions on freedom understood as merely necessary in order to guarantee freedom for all, "... under the same concept Hegel understands all the social preconditions that can be shown to be necessary for the realization of the free will of each citizen."¹⁷ These social preconditions are then glossed as the "communicative relations" that Hegel presents as elements of *Sittlichkeit*.

But Honneth realizes that this form of argument amounts to an "extension" of the modern notion of natural right since it involves a justified claim to entitlement to the conditions of free individuality.¹⁸ But he also realizes that the justifiability (the rational legitimacy) of *Sittlichkeit* cannot be understood as a matter of the legal rights of individuals, as in a right to the conditions for the realization of freedom. A social world conceived of as individuals laying claim on each other for the guaranteed protection of the existence of certain communicative

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practices or forms of social life does not make sense as a matter of entitlement claims. It would instead count just as much as a mark of the corruption and distortion of modern ethical life if individuals "subjectively" claimed such a life as an individual right as, explicitly for Hegel, familial life were experienced as the realm of right and contract. As we have already seen Hegel assert, this also gets the cart before the horse. He has argued, and Honneth presumably agrees, that one cannot understand the authority of rights claims themselves as a result of some deductive, purely rational thought experiment, dependent only on the concept of individual freedom. That was why Hegel had insisted that "right" and "morality" cannot exist independently or for themselves; such claims can only become practical reasons for individuals within and as a result of a certain form of social life. A common ethical life cannot be understood as the object of a rights claim if that life amounts to a necessary precondition of the determinate meaning and binding force of such a rights claim. (The somewhat paradoxical situation here is captured by a nice image used by Martin Hollis: How could Eve have possibly known whether it was right or wrong to eat of the fruit of the tree of the knowledge of good and evil, before she did?¹⁹)

It does not, I think, help much, to argue as Honneth does that these "social forms of existence" can themselves be said to have rights, as in "have a right to a legitimate place in the institutional order of modern societies."²⁰ Such forms are not and cannot be the realization of rights claims in any sense (they are the condition for the "actuality" of such claims). The notion of right, no matter the bearer, is tied necessarily to the capacity to place others under an obligation, and if such social forms are said to have a right to existence, then by parity of reasoning we will have to ask again, under what social pre-conditions could such claim to entitlement have binding "actual" force? The very arguments that led us to the issue of preconditions for rights claims will arise again if we consider those preconditions as matters of right.²¹

8.

Another approach might concentrate in a more narrowly Kantian way on the general question of whether anything with content can be derived simply from a consideration of what a rationally self-determining will would will. Kant may not have been right that such a will, qua rational, could only subject itself to a moral law, but the framework for the question itself might be right; all we need to do is to broaden the results. One can at least see that such a will could will nothing or approve nothing that would make a rationally self-determining will impossible. If one understands Hegel's theory as a self-realization theory, where what is being realized is one's nature as a rational self-determiner, one might be able to suggest at

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least certain minimal social conditions as required for this possibility, and so have an argument for the rational legitimacy of, and our unavoidable commitment to, *Sittlichkeit*. Each individual subject could be presumed to be committed to the formative familial, economic, legal, and state institutions thanks to which protection of the development of any possible rational self-determination would be secured. And Hegel does appear to invoke the Kantian language on this issue: "The will in its truth is such that what it wills, i.e. its content, is identical with the will itself, so that freedom is willed by freedom" (PR, 21Z) and the entirety of § 27 also insists that the free will is the will "which wills the free will." (Alan Patten has recently argued this thesis in his *Hegel's Idea of Freedom*, and Fred Neuhausers defends a version of it in his *Foundations of Hegel's Social Theory*.)

It is true that if we consider, hypothetically, a purely rational agent in order to consider what social forms such a self-determiner would be necessarily committed to, we can end up saying generally that such an agent would have to be committed to the "social conditions of agency" and that their being so necessary constitutes such institutions as rational. But we have not thereby said very much that is concrete or even specific, certainly not enough to get us to the modern, bourgeois family based on romantic love, a market economy, the civil society/state distinction, and so forth. As noted, Hegel has said from the start that the concept of freedom "gives itself" its own actuality, and in his logical language, there is much talk of an infinitely self-determining universal, the concrete manifestation of which is not a mere empirical instantiation but is determined by that concept. But if couched in these Kantian terms, the gulf between the promise of such claims and the reality of what we are left with if we follow this "deductive" interpretation is a chasm. And it is unlikely in the extreme that the *subjective* sense of one's own rationality qua participant in such institutions is some philosophically simplified understanding "that the free will wills the free will itself."

9.

So, what, according to Hegel, *does* make a practical justification *adequate* to the subjects involved, especially adequate in the sense that we have been investigating: appeal to such a consideration makes it possible to stand behind and claim a deed as one's own? It is clear enough that for Hegel there is an inseparable objective side to this question. Actions can be said to conform to the constraints of practical reason when the agent has not counted his own position as due more than others, just because it is his own, or when the rules governing all participants have been followed. We understand what it is for individuals to have "actually" come to adopt this

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sort of constraint and what it means for it to function as a constraint, by understanding it as the result of a coherent social development, a story that is most famously known as the struggle for recognition. But this emphasis on the "priority" of ethical life claim already also suggests something quite important for the subjective side. Being moved by such a consideration, practically accepting it as a constraint, is not to be understood as something one elects to do at some moment in time, as if one pauses and engages in moral reasoning that has such a constraint as a deductive outcome. Being a property owner, there are claims I am allowed to make on other property owners, a justification that circulates and functions, can be accepted or rejected or modified according to the rules of the property-owning institution; being a parent, there are claims on and demands from children and other parents, and so forth. The consideration is not properly understood as a belief held by, or an ideal believed in by, a subject, some propositional object of an attitude. The point one needs to understand to get Hegel right is that this participation in a practice, offering, accepting, and rejecting institutional reasons, is *all* that Hegel counts as "having" the sorts of reasons that allow the action to be counted as free, genuinely mine.

We can see this more clearly by noting what Hegel think happens "subjectively" when those objective conditions are not fully actual. Of course, the claim to justifiability alone establishes the "no special weight" constraint, but the "realization" of such a commitment can be quite various, depending on these objective conditions, and can even result for the subjects, as they understand things, in opposing realizations. When Antigone and Creon in Hegel's famous treatment of Sophocles' play, are struggling about what it means to attempt to bury Polynices' body, whether it is an unavoidable act of familial duty or a treasonous betrayal of the *polis*, they are arguing in effect about who will set or determine socially the meaning of the deed, and the objective religious and political concepts available to them at the time make a resolution of such claims impossible and so, subjectively, allow each party an objective claim to rectitude, make the appearance of the opposite claim wholly outside what can be justified. And this failure of such objective conditions begins to reveal what would be subjectively successful in the appeal to reasons. What Hegel suggests about the kind of social development that would ameliorate this situation is first of all that it is a social development that would do so, not the discovery of some "truth-maker" in the world or better access to such a truth-maker or some greater subjective clarity. And this suggests a distinctly unusual story about adequate practical reasons, experienced as adequate by a subject.

That is, first of all, the lesson to take from these results so far is that practical rationality, the exercise of which constitutes

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freedom and establishes the condition under which I can experience my deeds as truly my own, is always "institution bound," that no one can be said to have any sort of effective, practical reason to do anything if conceived just as a "purely rational" self-determining agent. This is true, according to Hegel, even of universal moral obligations to all persons, since he understands morality itself as a specific historical institution and, as with so much, understands its normative authority developmentally, not deductively. Said another way, according to Hegel there is no "place" to stand, putatively outside such institutions, from which one could be said to have a reason to sign up, anymore than one can be said to have a reason to move a knight or a pawn unless one is playing chess.²² The obvious retort here—that it must be possible to discuss whether one has reasons to play chess in the first place—is one that Hegel's account accepts, but he does not treat it as introducing any *pre-institutional* perspective. In effect, the way the whole *Philosophy of Right* works is for Hegel to show how anyone playing one sort of institutional game (or offering, accepting, rejecting, or modifying proposed justifications) also has good reasons (reasons derived wholly from his trying to play that one game) to play another. We can thus distinguish kinds of reasons relevant to claims of abstract right (like "that is my property, therefore, you may not take it" or "I did not stipulate that in the contract, so you may now not demand it") from reasons relevant to moral judgments ("No, because it violates my conscience") from reasons relevant to ethical life ("because I am a father," "because a good business man must be trustworthy," "because my country is in danger").²³ What can look like a purely rational reflection on the limitations of some normative institution is in reality the pull of another unavoidable, already in place institutional commitment.²⁴ (Historically, for example, the most important such differentiation in Hegel's account is between "because he is a citizen," "because that is what a citizen does," and "because this is a common means for us to improve productivity" or "because we discover we have a common good in the pursuit of our individual goods.") In Hegel's view, human subjects are, and are wholly and essentially, always already underway historically and socially, and even in their attempts to reason about what anyone, anytime ought to do, they do so from an institutional position. (Antigone and Creon do not rely on personal sentiment or oracles to determine what to do. Each is trying to argue for what, respectively, *any* sister or *any* ruler must do, even though they make no appeal to or deduction from "what anyone at all must do.") If we abstract from that position in an attempt at an idealization, we abstract from the conditions of the possibility of practical rationality.²⁵ The conventions of ethical life governing what sorts of reasons can be offered, in what context, and how much

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else one is committed to by offering them, are not, in other words, rules that one might invoke and challenge all at once; they are criteria for what will count as raising and challenging any claim.

It is important to note that this is not a prelude to a claim for a smug cultural positivism, as if we count as justifiable only what functions as a justification in our game, and this because that is just the way we do things. As we shall see below, this also is far too reflective and abstract a position for *it* to count as a practical reason. But the position does mean that in cases where we are confronted by a justification we do not accept, say one which justifies treating wives and children as a husband's property, we have no practical choice but to react to the claim as a move in the space of reasons, an attempt at justification, and then to trot out the extended understanding of personhood and natural right and so forth that function in our claim that this is unjust. (Otherwise, we would not be treating such other subjects as subjects.) There is also no possibility for us to count "respect for cultural differences" in this case as a norm for action (or inaction) unless *that too* can be understood as justifiable and this in a way that may very well require action when we interact with cultures that do not value such tolerance.

10.

None of this relativization of practical reasons to institutional presuppositions should be taken to mean that Hegel's own reflections, in the *Phenomenology*, the *Encyclopedia*, and his lecture courses about the inherent or objective rationality of modern institutions, are somehow in tension with this restriction. We are so accustomed to thinking of this issue "Platonically" that we expect there to be this tension. That is, we think that everyday life depends on "presuppositions," the justification for which "runs out" at some point in everyday life, that this represents a justificatory failure, and that only philosophy can complete what we incompletely do in our ordinary practices. This way leads both to philosopher kings and intellectual vanguards. We also tend to think that such justificatory practices cannot just constitute practical rationality because they can break down, participants can experience their real, determinate insufficiency and there can be a kind of learning process or genuine moral improvement and all of that must mean that we are after, and might be getting closer to, some state of perfect practical rationality, a completely adequate exchange of impartial justifications. And if that is so, it must be in principle possible simply to lay out those conditions and not worry that, imperfect creatures that we are, we cannot find much exemplification of such a state in the real world.

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These are apposite, important considerations, but from Hegel's point of view, we must be careful how we state the issues. We must especially attend to the difference between the kinds of breakdowns, *aporiai*, and unresolvable tensions that occur in a community's linguistic and so justificatory practices and, thereafter, the experience of partial resolutions, *Aufhebungen*, and so forth. This phenomenon is real but would only be the local context where, once practical rationality is defined in this post-Wittgensteinian way (as rule-following), participants could be understood as negotiating with others at some particular time better possible candidates for such rules, for normative status; that is, better, motivating practical reasons for the participants, given what had broken down. There is no particular reason to think that such participants do or must understand themselves as "getting closer to absolute truth or acceptability" in order to do *that*. (What Orestes and Clytemnestra, eventually the Eumenides, need is the Homicide Court, not the Kingdom of God on Earth.) And, on the other hand, much more reflectively and at a "level" that is irrelevant to motivating practical reason, there could be an attempt to situate these sorts of normative permissions and constraints within some ever clearer self-understanding with regard to normativity and justification in general (a "Science of Logic," say).

For Hegel in other words, philosophy does not do better what persons at the level of "objective spirit" do poorly; it does something else. It may count in Hegel as a "higher" and "freer" activity, but it is not relevant to objective spirit and actual moral competence is not a dim, confused grasp of principles or theory. It is not an inferior version of philosophy but a version, perhaps a good and getting-better version, of such moral competence. Indeed in some matters (like a civil religion) such a theory would distort ethical life if imported as what Hegel calls an "ethical power." In fact, in Hegel's most radical claim of all, the content of such "logical" philosophical activity is nothing but an explicit re-enactment of the development of the inter-subjective logic of breakdown and recovery, a comprehensive logic of such explanation and justification that itself plays no role for such subjects.

The original critic of Plato on this "continuity" point was of course Aristotle, and it is interesting that the importance of this differentiation is often neglected in accounts of both Hegel and Aristotle. Aristotle's claim is also that he is in effect not providing in his ethical writings any reasons for anybody to do anything, that the ethical world is "all right" by itself, and requires no instruction or philosophical justification. But commentators sometimes assume that the *phronimos* must know something about nature and human realization that forms the basis of his practices. And all that is certainly not the

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case, even though there is, according to Aristotle, something to say about the basis in nature for an ideal human being and polis.²⁶ And Hegel is also clear enough, in his own way, that the considerations adduced in a philosophy of objective spirit that show modern institutions to satisfy the conditions of right are not and could not be *practical reasons*. When he claimed in § 145, quoted earlier, “[t]he fact that the ethical sphere is the system of these determinations of the Idea constitutes its rationality,” he was not offering the sort of account that might be practically relevant in generating allegiance and forestalling defections, in the way that a contractarian or even a Kantian might assume practical relevance for their accounts. The same could be said for Hegel’s appeals to his historicized rather than systematic account of rationality, of the sort we get in the *Phenomenology* and history lectures. He is not summarizing in some sort of longhand what emerges as shorthand in the practical experience of modern individuals.

And this differentiation in tasks between the limited role of reason as practical in objective spirit and the “freest” realization of reason in absolute spirit is the basis for the most well-known and most misunderstood claim of *The Philosophy of Right*. In the Preface, Hegel claims that even though he is attempting “to comprehend and portray the state as an inherently rational entity,” it is also the case that his philosophy “must distance itself as far as possible from the obligation to construct a state as it ought to be” (PR, 21). Since he also goes on to stress both that philosophy can discover “the rose in the cross of the present,” thereby “delighting in the present,” and providing through this “rational insight” a reconciliation with actuality, *and* that philosophy absolutely cannot offer any instructions about how the world ought to be, that it always comes on the scene too late for that, like the Owl of Minerva that only takes flight at dusk, and since these two claims are in considerable tension (Why wouldn’t one way of instructing the world about “how it ought to be” be to claim that is as it ought to be? Why do things look like a dancing rose in the cross of the present *and* a grey landscape at dusk?), commentators have often solved the problem by simply discounting Hegel’s “no instruction,” no “ought to be” qualifications and assume he did mean to say that the contemporary state and even the contemporary Prussian state was just as it ought to be.²⁷

But his procedure throughout is to differentiate these two considerations. He does so quite explicitly in his 1818–19 *Rechtsphilosophie* lectures when he differentiates practical reasons based on knowledge of the law, a further kind of knowledge “based on reasons” and “philosophical understanding ... based on the Concept” (VPR.2, 106).²⁸ When he had claimed in the Preface that his account might allow a “reconciliation” with

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modern actuality, he noted immediately a very specific accusative:

to those who have received the inner call to comprehend, to preserve their subjective freedom in the realm of the substantial, and at the same time to stand with their subjective freedom not in a particular and contingent situation, but what has being in and for itself. (PR, 22)

This sort of comprehensive perspective on the fully objective rationality of modern institutions, both within a systematic account of the various "moments" of account-giving and justifiability, and as the historical culmination of the self-education of the human spirit, is to be strictly distinguished from any account of what circulates effectively as a justification within some institutional setting at a time.

So, when Hegel wants to give a concrete example of the subjective side of the rationality claim, he invokes the publicity and rationality conditions of jury trials (§ 228). Citizens, he claims, could not themselves, subjectively, have reasons to keep faith with the trial system if all decisions were made by professional courts, based on strict standards of evidence and complex legal arguments, even if all those standards and arguments met the highest standards of legal expertise "in themselves." *Their* (the citizens') reasons for sustaining such an institution depend both on the implicit standards of the institution itself (in this case equality before the law) and considerations that can be given and accepted by the participants in the institution itself. Or, to revert to the standard case, while it is true that all a citizen has to go on in determining what to do is his station and its duties and while he can only come to affirm such a role by appeal to the sort of critical reflection available at the time, it is perfectly possible to claim that the station he occupies does not in itself conform to the demands of reason.

Requesting, providing, accepting, or rejecting practical reasons, in other words, are all better viewed as elements in a rule-governed social practice. Such justifications are offered to others as claims that the rules governing their *common* practice *are* being followed, and the practical issue of adequacy must be answerable only within such a practice, given the way a practice or institution has come to embody the crises, breakdowns, and changes that have made it what it is.²⁹ Our assumption that an action should be understood as such-and-such and not so-and-so always involves the expectation that another should so construe it also, and we can make such assumptions only if we have already come to understand each other as fellow participants, in some determinate way, or only given relatively "thick" and reciprocal assumptions and

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expectations. Practical reasoning always presumes such contexts, and so while there is no Hegelian solution to the question of whether prudential reasoning can ever justify some qualification or suspension of my partial good, there is also no "actual" problem to be solved. The trust and solidarity without which cooperative action is impossible, which cannot be justified on egoistic premises or on the basis of "self-interest rightly understood," is, if it exists and if Hegel is right, best understood as the product of a collective historical experience of its absence and only partial presence.

So, for us, now, "because families should try to foster independence in their children" might count as a perfectly fine and conclusive reason in such a practice, with no more needing to be said for the agent. As Hegel keeps insisting, the agent must of course know and affirm the reason and understand what else one is committed to in so responding, but that is all much different than an appeal, even an "implicit" appeal, to dialectical transformations in history or conformity to the developed Idea of right.

Now obvious worries and questions start creeping in again here: that we are headed for something like the position Durkheim advocated in *The Rules of Sociological Method*, that "Individual human natures are merely the indeterminate material which the social factor moulds and transforms."³⁰ And we need to ask questions like: how do such institutional boundaries begin to break down, unless by appeal to purely rational critique? It can all seem relativistic; does any of this help us understand any Hegelian basis for claims by the individual against institutions, and so on? There is much more that would have to be said about the Hegelian category of agency, the connections (if there are any) between philosophical "comprehensibility" and practical sufficiency, the status of individual responsibility in Hegel, his account of punishment, and so forth, for his approach to be defended.³¹

And finally, many of these formulations can sound deflationary and anti-rational in spirit and indeed many neo-Humeans, like Bernard Williams, are compelling advocates of the internalism condition and so the limitations of "ethical theory."³² But it is important to note in closing that Hegel is not denying that human reason can set ends or determine action on its own, nor is he qualifying his controversial claim that modern individuals are responsive to practical reason in ways unlike and superior to prior civilizations. He is denying the Kantian and even the rational egoist notions of practical reason itself and is trying to show that what one has a justified reason to do cannot be made out without attention to the forms of institutional life that concretely determine what adequate self-understanding and successful justification are.³³ He is claiming that "having a reason" (not just in the explanatory sense but in the justifica-

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tory, adequate, *good* reason sense) is not some sort of reflective and ultimately absolute certification before the Bar of Reason Itself. As noted throughout, Hegel is prepared to claim that some institutions can be said to embody the historical self-education of the human spirit. The account and justification of *that* claim to genuine education, and therefore moral progress, can be given but only "at dusk," never in a way that legislates "what ought to be done" and only for what he calls in the *Philosophy of Religion* lectures, the "sacred priesthood" of philosophers.³⁴ Marx was right about Hegel, in other words. The point of philosophy for Hegel is to comprehend the world, not to change it; and this for a simple reason that Marx never properly understood: it can't.

Abbreviations

- § indicates paragraph numbers in *Grundlinien der Philosophie des Rechts, Werke*, 7. A = his remarks (*Anmerkungen*) to the paragraph's topic; Z = his additions (*Zusätze*) to the paragraph, and N = his handwritten notes to the paragraph.
- Werke* Hegel: *Werke Theorie Werkausgabe*, 20 vols. (Frankfurt: Suhrkamp Verlag, 1970).
- LPWH* *Lectures on the Philosophy of World History*, "Introduction," trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1975).
- VPR 18* *Die Philosophie des Rechts: Die Mitschriften Wannenmann (Heidelberg 1817–1818) und Homeyer (Berlin 1818–1819)*, ed. K.-H. Ilting (Stuttgart: Klett-Cotta Verlag, 1983).
- VP* *Vorlesungen über die Philosophie der Geschichte. Werke*, xii; *The Philosophy of History*, trans. J. Sibree (New York: Dover, 1956).
- EL* *Hegel's Logic*, trans. William Wallace (Oxford: Oxford University Press, 1975).
- VPR* *Vorlesungen über Rechtsphilosophie*. 4 vols., ed. K.-H. Ilting (Stuttgart: Fromman Verlag, 1974). (Includes Hotho's transcriptions from 1822–3 lectures and Griesheim's from 1824–5 lectures.)
- PR* *Elements of the Philosophy of Right*, trans. H. B. Nisbet, ed. Allen W. Wood (Cambridge: Cambridge University Press, 1991).
- Enz.* *Enzyklopadie der philosophischen Wissenschaften, Werke*, vol. 8, 9, and 10.

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Notes

¹ Letter to Zellmann, in *Briefe von und an Hegel*, d. 1-3, edited by J. Hoffmeister (Hamburg: Felix Meiner, 1952-1954), I, 137.

² The situation would be tragic, in other words, since reliance on such subjective certainty alone would still produce indeterminate and unreliable results, even if that (that reliance on conscience) was all that such a social world would make available for guidance.

³ I do not, of course, mean to deny that freedom has something to do with effective capacities. For one thing, one must be *able* (in numerous senses of that word) to do what one's role and self-understanding demand of one, etc. The idea of individual, causal *spontaneous* initiation of action is what is being contrasted with such a state theory. Cf. "Naturalness and Mindedness: Hegel's Compatibilism," *The European Journal of Philosophy* 7, no. 2 (1999): 194-212.

⁴ There is a loose and general sense in which I can be said to have set a goal myself (autonomy of a sort), to have psychologically identified wholeheartedly with the end (authenticity), to have had the means to achieve it (power), to have experienced no human impediments (negative liberty), to have experienced in my striving a development and growth (dynamic self-realization), and to experience the result as a genuine reflection of me and what I intended (self-realization in the sense of self-recognition). Thus one might say that such widely various conceptions of freedom are normatively neutral in a way, beyond freedom itself being an abstract ideal. But the point Hegel is making is that it can appear this way because the role of reason (and so the inherent sociality of practical reasoning) has been suppressed in such a summary. Cf. Raymond Geuss's comments on the limitations of the "see myself in" locution in self-realization theories in his very helpful "Auffassungen der Freiheit," in *Zeitschrift der philosophischen Forschung* 49 (1995): 1-14.

⁵ Another longer topic: answering worries like Isaiah Berlin's about a great modern "inflation" in the concept of freedom, whereby many other things we want to count as elements of a good life are unjustifiably packed into claims about what it is to be free.

⁶ See also *PR* § 147N, where Hegel again says "... the Greeks had no conscience."

⁷ It is not at all clear just how Hegel means to contrast this so-called modern principle of subjectivity with premodern, especially ancient "shapes of spirit." The surface of his claim, that Greek individuals "had no conscience," did not reflect, lived only and immediately for the fatherland, etc. is absurd. Nothing in Sophocles' play makes any sense unless Antigone and Creon could have acted otherwise than they did, as the presence and arguments of Ismene and Haemon make dramatically clear, and the viewer, the Greek viewer, could not experience the play as tragic if he entered the amphitheater locked into one role or the other, was not himself pulled one way then the other, and instead took in the play as a cheerleader for one side or the other. Even in the Homeric world, the temptations of Calypso wouldn't make much sense as temptations, were Hegel's surface claim correct.

I think that what he means to say is not that individuals function in some completely unreflective way in their roles but that when the objective deficiencies in the social order do force a crisis-like

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confrontation with other equally required social functions, reflection and doubt are indeed inspired (Cf. Orestes in the *Libation-Bearers*), but they lead nowhere, suggest no resolution, and must merely be suffered. This is in effect what Hegel says in his hand-written notes to *PR* § 147. The Greeks "were unable to give an account," and so "had no conscience, no conviction," what they believed was "unmediated by reasons" (§ 147N). (This is still extreme; one of the oddest things about Sophocles' play is how much of it is sustained and genuine arguing. But it is on the right track.)

⁸ See also *Enz.* § 503A, and the assertion there that modern subjects ought to find "assent, recognition, or even justification [*Begründung*] in his heart, character [*Gesinnung*], conscience, insight, etc."

⁹ On the centrality for Hegel of the "subjective" side of the "reconciliation" problem, see Michael Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge: Cambridge University Press, 1994), ch. 4, and Fred Neuhouser, *Foundations of Hegel's Social Theory: Actualizing Freedom* (Cambridge: Harvard University Press, 2000), chs. 3 and 7.

¹⁰ See *PR* § 7Z, and Axel Honneth's gloss in *Suffering from Indeterminacy: An Attempt at a Reactualization of Hegel's Philosophy of Right* (Amsterdam: Van Gorcum, 2000), 26, and cf. the *Phenomenology's* famous claim about *Geist* as an "I that is a we and a we that is an I." See Terry Pinkard, *Hegel's Phenomenology: The Sociality of Reason* (Cambridge: Cambridge University Press, 1994) for the best account of the importance of the notion of "sociality" in Hegel's overall project and in the *Phenomenology*.

¹¹ Rousseau, *Social Contract*, I.7, in J.-J. Rousseau, *The Social Contract and Later Political Writings*, ed. and trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997).

¹² Rousseau, *Social Contract*, I.8, op.cit.

¹³ Cf. Martin Hollis's book, *Trust within Reason* (Cambridge: Cambridge University Press, 1998), especially ch. 2, "The Perils of Prudence."

¹⁴ The best account of this gloss on Hegel's charge of "emptiness" is Allen Wood's in his *Hegel's Ethical Thought* (Cambridge: Cambridge University Press, 1990), ch. 9, especially 164–165.

¹⁵ Henry Allison has attempted to defend Kant from the charge that a Rational Egoist could just as easily fulfill the rationality (and so universality) requirements by noting that Kant is assuming a certain notion of freedom, "transcendental freedom," or an ability to act in complete independence of anything empirical. Cf. Henry Allison, *Kant's Theory of Freedom* (Cambridge: Cambridge University Press, 1990), 207. But this reply is potentially question-begging, arbitrarily allowing only that notion of freedom which will fit Kant's claim, and appears inconsistent with Allison's own "incorporation" principle, which has it that empirical desires and inclinations never simply cause an action to occur; they must be "taken" to be sufficient reasons by a subject, and so what turns out to be motivating the action is not a sensible desire but the principle that one ought to act on such a desire. This is, in the relevant sense, acting independently of empirical desires. That is, even with the "transcendental freedom" assumption, this seems all the freedom we need to make the case against Kant's attempt to link the universality condition with, and exclusively with, his universalizability test.

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¹⁶ Honneth, *Suffering from Indeterminacy*, 20

¹⁷ *Ibid.*, 28–29.

¹⁸ *Ibid.*, 29.

¹⁹ Martin Hollis, *Reason in Action* (Cambridge: Cambridge University Press, 1996), 11. Or, as Hollis also puts it, there is no point at which Eve could have said, “Adam, let’s invent language.”

²⁰ Honneth, *Suffering from Indeterminacy*, 30.

²¹ I had the same sort of problem with Honneth’s earlier, equally interesting and valuable “neo-Hegelian” book, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, trans. by Joel Anderson (Cambridge: MIT Press, 1996). There the “moral grammar of social conflicts” was analyzed by appeal to the importance of esteem or recognition as a social good and so disrespect as a social harm. The same questions arise. What sort of a good is the esteem or solidarity without which full individual subjectivity is impossible? Can it be legally or in some other way demanded when it is absent (like a right)? How? If not demanded, what sort of redress is appropriate? If the broadest form of social esteem depends on some form of common values, why should we believe that developed, ever more secular modern cultures can provide any such successful common goals?

²² Cf. Hollis, *Trust Within Reason*, 115. “I, as an individual cannot mean anything by my action unless there is something which my action means and other people to recognize that this is what it does mean.” For more on the indispensable “recognition” requirement in Hegel’s account of normativity, see my “What is the Question for Which Hegel’s ‘Theory of Recognition’ is the Answer?” in *The European Journal of Philosophy* 8, no. 2 (August 2000).

²³ Hegel thus continued to develop a version of “critical theory” pioneered by Kant, and developed in Habermas and Honneth, where reflection could establish certain “boundary conditions” in attempts to render intelligible or justify deeds and then could explain what is going wrong when these conditions, or sorts of reasons, are not observed or are confused. Kant started this particular ball rolling with his *Verstand-Vernunft* distinction, and while Hegel did not accept Kant’s terms, his own philosophy is likewise committed to distinguishing “the philosophy of the understanding” from “speculation,” or finite reflection from absolute reflection, and so forth. Claims of abstract right are thus valid but not in an unlimited sense nor without being limited by moral claims of persons to consideration as responsible subjects and ends in themselves, and so on.

²⁴ Honneth (*Suffering from Indeterminacy*) shows very well what Hegel understands to be going wrong when subjects act on a valid but limited conception of freedom and ignore such limits, or how various social “pathologies,” like loneliness, emptiness, alienation, and so forth develop. Cf. 36 and PR § 136, 141, and 149.

²⁵ This obviously introduces the question of the historical and systematic presuppositions for a possible philosophy of objective spirit, and such a consideration would have to range all the way from Hegel’s claims about the unusual “logic” necessary to account for the concept of freedom (being-with-self-in-the-other), to his case for a social conception of agency (that for Hegel, to be an agent is to be taken to be one in a certain way). For more on this recognition (*Anerkennung*) theme, see my “What is the Question for Which Hegel’s ‘Theory of Recognition’ is the Answer?” in *The European Journal of Philosophy* 8,

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no. 2 (August 2000).

²⁶ Of great value on these themes in Aristotle is John McDowell, "Virtue and Reason" in *Mind, Value, and Reality* (Cambridge: Harvard University Press, 1998), 50–76. See especially the remark about "vertigo" on page 63.

²⁷ There is a good deal more to be said about Hegel's relation to Aristotle on this "theory-praxis" issue and much of the best that has been said can be found in Chapter Four of the third part of Michael Theunissen's *Hegels Lehre vom absoluten Geist als theologisch-politischer Traktat* (Berlin: de Gruyter, 1970), 38–419, especially 404. Also invaluable (even though I disagree with the interpretation) is H. F. Fulda, *Das Recht der Philosophie in Hegels Philosophie des Rechts* (Frankfurt: Vittorio Klostermann, 1968).

²⁸ VPR.2, 106.

²⁹ Terry Pinkard's account of reasoning and "assuming positions in social space" is an important version of what such a social view of practical reasoning looks like in the contexts that Hegel takes up. See his *Hegel's Phenomenology* and his account of the Hegelian *Rechtsphilosophie* in Chapter Seven, "The essential structure of modern life," 269–343.

³⁰ Emil Durkheim, *Rules of Sociological Method*, 8th ed., trans. Sarah A. Solovay and John H. Mueller, ed. George E. G. Catlin (Glencoe, IL: Free Press, 1950), ch. 5.

³¹ There are two issues in particular that would have to be addressed in a fuller account, and they both concern what appear on the surface to be inconsistencies in Hegel's text. (i) Hegel seems to see no problem in both describing the subjective attitude of modern citizens as a kind of "trust" and even nonreflective (*Enz.* §§ 514–515), just as he insists, as we have seen several times, that they "knowingly and willingly" will "the universal." See Neuhauser's Chapter Seven, "The Place of Moral Subjectivity in Ethical Life," in *Foundations of Hegel's Social Theory*, 225–280, for one of the best discussions of this problem.

And (ii) there is the question of the bearing of these issues on the account of moral psychology that undergirds the *Philosophy of Right*, especially as formulated in that work's "Introduction." Hegel seems both to reject any view of the role of practical reason that has it as an independent faculty assessing the worthiness of various drives, desires, and aversions, as if these were brute psychological givens (a denial especially apparent in his diatribes against Kant, positive religions, ascetic moralities, etc.), and to invoke more traditional rationalist language, as if one could separate oneself from and "stand above" (§ 11 and § 14) one's distinct connative states and evaluate their worthiness to serve as motives. For a very brief and introductory pass at this latter problem, see my "Hegel, Freedom, The Will: *The Philosophy of Right*, #1–33," in *Hegel: Grundlinien der Philosophie des Rechts*, ed. Ludwig Siep, (Berlin: Akademie Verlag, 1997), 31–53. The problem is complicated by our intuitive suspicion that one might be said to have reflected rationally on what to do, have come up with a socially effective reason, have fixed on a goal, have had the sufficient self-control and intelligence and means to achieve the goal, and have in fact achieved it, only to find oneself dissatisfied that one still could not "see oneself in the deed." This dimension of freedom is of concern to Hegel and he has to have some way of dealing with it. See Geuss,

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"Auffassungen," 6: "Ich kann nicht durch einfache Introspektion immer feststellen was meine wirkliche Wünsche sind; durch einfach theoretische Reflexion auch nicht." See also his suggestions about Hegel on both "reflection" and "identification" in "Freedom as an Ideal," *The Aristotelian Society*, suppl. 69 (1995): 87–100.

³² One of the themes central to Williams's project—de-emphasizing any supposed categorial difference between moral and nonmoral reasons—is also quite relevant to Hegel, and involves again a connection with Greek themes worth pursuing. The practical reasoning that Hegel links with "right" action is not a distinctly moral form of reasoning and so he in effect has no distinct theory of "morality." Casuistical questions, dilemma situations, conflicting duties problems, moral worth issues, and so forth, play no decisive part in his discussions of modern ethical life.

³³ These considerations raise the question of how Hegel handles the issue of personal responsibility, which is another large, separate issue. I discuss some aspects of it in "Taking Responsibility: Hegel on Agency," forthcoming in *Subjektivität und Anerkennung*, edited by Barbara Merker, Georg Mohr, and Michael Quante.

³⁴ Hegel, *Werke* 16: 356. (Philosophy is an "abgesondertes Heiligtum und ihrer Diener bilden einen isolierten Priesterstand, der mit der Welt nicht zusammengehen darf.")

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The Project of Reconciliation: Hegel's Social Philosophy

MICHAEL O. HARDIMON

The central aim of Hegel's¹ social philosophy (the *Rechtsphilosophie*) is to reconcile his contemporaries—the men and women of the nineteenth century—to the modern social world.² By “the modern social world” I mean the central social institutions of that era: the family, civil society, and the state. Hegel seeks to enable his contemporaries to overcome their alienation from this world by providing them with a philosophical theory that will reveal its true nature (*PR*, Preface ¶14). “The project of reconciliation” is the name I have given to this enterprise.

To my mind, the project is tremendously interesting—for at least three sorts of reasons. The first kind are personal and political. Many of us who live in contemporary Europe and America feel alienated.³ We feel “split” from the social world. Not everyone feels this way, of course, but, to those who do, the problem that pushes Hegel's project—alienation—and

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1. A list of abbreviations used to refer to Hegel's texts, along with information about the method of citation, appears at the end of this article. All translations from the German texts are my own.

2. I follow the standard German practice of using the word *Rechtsphilosophie* to refer to the social philosophy Hegel presented in *PR*, the section “der objektive Geist” of *EL*, and the lectures in Heidelberg and Berlin between 1817 and 1831, which include *VPRG*, *VPRHO*, *VPRHN*, and *VPRW*.

3. I provide a provisional characterization of alienation on p. 167 and a more precise account of the notion in Section V. For a useful discussion of the philology of the term, see Richard Schacht, *Alienation*, with an introductory essay by Walter Kaufmann (Garden City, N.Y.: Anchor Books, 1970).

the ideal that pulls it—reconciliation—are of urgent personal concern. The project does not, it is true, speak *directly* to us. The social world Hegel seeks to reconcile his contemporaries to—the social world of the nineteenth century—is rather different from our own. But the basic issues Hegel addresses are issues many of us care about deeply. Even if we cannot accept the answers Hegel gives, we can be gripped by the problems that moved him.

The second sort of reasons are scholarly. Reconciliation is the main goal and central organizing category of Hegel's social philosophy (PR, Preface ¶15, §360). In fact, reconciliation is the main goal and central organizing category of Hegel's philosophy as a whole (VA, 1:81/1:51; VG, 78/67; VGP, 3:69/165).⁴ In order to understand his social philosophy, we must understand the role that reconciliation plays within it. Moreover, the fact that his social philosophy is organized around this goal is, arguably, its most distinctive feature. Scholars have generally recognized that reconciliation is central to Hegel's social philosophy, but no one has discussed this matter in a way I find satisfactory.⁵

The third sort of reasons for looking at Hegel are philosophical. Reconciliation is an important philosophical topic, even if it is unfamiliar. The claim that reconciliation ought to be a central organizing category of social and political philosophy deserves serious consideration. Equally worthy of attention is the claim that reconciliation constitutes a significant social ideal.

In this connection, it is worth observing that Hegel's concern with reconciliation is not idiosyncratic. Although it has not been generally recognized, reconciliation represents an important concern within the tradition of modern political philosophy: Rousseau, Kant, Marx, and Rawls all offer visions of reconciliation, broadly understood.⁶ Hegel's social phi-

4. The project of reconciling people to the social world is one part of the larger project of reconciling people to the world as a whole, which in turn is a part of the still larger project of reconciling *Geist* (spirit, mind) to the world as a whole and thereby to itself.

5. Recent commentators include Robert Pippin, "Hegel's Political Argument and the Problem of *Verwirklichung*," *Political Theory* 9 (1981): 510; Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge, Mass.: Harvard University Press, 1989), p. 430; and Allen Wood, *Hegel's Ethical Theory* (New York: Cambridge University Press, 1990), p. 6.

6. Indeed, if one expands the idea of the project of reconciliation *far enough*—to the completely general idea that the task of political philosophy is to show that modern institutions are worthy of allegiance—then almost every modern form of political theory can be regarded as being *implicitly* committed to the aim of reconciliation. If we think about rec-

losophy provides the best place to begin thinking about the philosophical importance of this ideal. He was the first modern thinker explicitly to claim that reconciliation is the proper aim of social philosophy. And his social philosophy provides the deepest and most comprehensive philosophical treatment of the topic available. If understanding Hegel provides a *historical* reason for looking at the project of reconciliation, understanding the project of reconciliation provides a *philosophical* reason for looking at Hegel.

My aim in this article is to introduce Hegel's project. I shall neither attempt to present the project nor attempt to assess it.⁷ My aim is simply to explain what the project is. I begin by considering the *problem* the project addresses and the sort of *solution* it proposes, and devote the remainder of the article to an examination of the project's *goal*.

I

The problem the project addresses is, of course, *alienation* (*Entfremdung*).⁸ Hegel believed that his contemporaries were alienated from the modern social world and that their alienation manifested itself in their feelings and beliefs. On his view, they felt “split (*entzweit, getrennt, zerrissen*) from the family, civil society, and the state. And they regarded these institutions as alien, incomprehensible, and hostile or indifferent

conciliation in this very broad way, what distinguishes Hegel's approach from mainstream political philosophy is his explicit commitment to the aim of reconciliation, his insistence that reconciliation is the central organizing category of political philosophy, and his specific conception of reconciliation—which is far richer than the general idea of regarding institutions as worthy of allegiance. It is also worth noting that it is precisely *Hegel's* project that puts us in a position to see that almost every modern form of political theory is committed to the broad aim of reconciliation. For in *explicitly* making reconciliation the goal of his social philosophy, Hegel provides a perspective from which we can see that reconciliation is a goal *implicit* within modern political philosophy.

7. I provide a full-blown presentation of the project in *Hegel's Social Philosophy: The Project of Reconciliation*, forthcoming from Cambridge University Press.

8. Hegel does not, it is true, use the word *Entfremdung* to describe this form of division; moreover, the structure of this form of division differs from the structure of the form of consciousness he discusses in the section of the *Phänomenologie* under the rubric “der sich entfremdete Geist” (Self-alienated Spirit) (*PhG*, 359–441/294–363). Nonetheless, it is clear—and uncontroversial—that Hegel's social philosophy is meant, among other things, as a response to the problem I am calling “alienation.” For Hegel's general view that modern social life is characterized by splits or divisions, see the early *D* (21–22/89–91) and the much later *VA* (1:81/1:55), constructed from Hegel's lecture notes by H. G. Hotho.

to their needs. In short, they were not “at home” (*bei sich, zu Hause*) in their social world.

The reason they were not at home, Hegel maintains, was that their social world *appeared* to be hostile, alien, and incomprehensible (PR, Preface ¶15). Civil society represented a new and troubling social formation, distinct from both family and state (PR, §182Z; VPRHO, 565). By “civil society” (*Bürgerliche Gesellschaft*) Hegel means, roughly, the depoliticized sphere organized around the modern market economy within which people pursue their own separate and particular interests.⁹ Civil society appeared to be anarchic and incomprehensible, on the one hand, and atomizing and fragmenting, on the other (PR, §§184Z, 238; VPRHO, 571). It seemed to sever people’s connections to family and state, transforming them into isolated individuals who lacked psychological unity and personal harmony. During this period, largely as a result of the emergence of civil society, the state had taken on a new and problematic form. It appeared to be too large and complex to be intelligible or afford any kind of meaningful participation. It also appeared to be radically insensitive to the claims of individuality. The modern bourgeois family, on the other hand, appeared all too traditional (PR, §164Z; VPRG, 437), and, like the state, seemed to offer no room for individuality. The upshot of all this was that there appeared to be a striking *lack of fit* between the modern social world and its members: Civil society and the state did not appear to foster community. The state and the family did not seem to promote individuality. Civil society and the state did not seem to be comprehensible. And the family, civil society, and the state did not appear to form an intelligible whole.

Hegel argued that this appearance (that the social world is hostile, alien, and incomprehensible) was false. The fact of the matter was that the family, civil society, and the state formed a single coherent, intelligible system that promoted both individuality and community (PR, §§157, 260). This system made it possible for people to realize themselves both as full-fledged individuals and as full-fledged community members (PR, §§153, 154, 260). In the modern social world, people could lead free and rational lives and “be at home.” The social world was, Hegel maintains, “a home”—a place where its members could *be* at

9. Civil society, as Hegel understands it, is not just the market. It also includes the legal and judicial system (PR, §§209–29), a public authority (PR, §§231–49), and a system of corporate groups (PR, §§250–56).

home (PR, §§4, 23; VPRG, 399; VPRHN, 122). Because of this, he argues, it was *worthy* of reconciliation. The central task of Hegel's theory of the modern social world (the *Rechtsphilosophie*) is to make good on this claim.

II

Unless we remember that Hegel took the modern social world to be a home despite its apparent foreignness, his proposed solution to the modern predicament of alienation will seem, at best, bizarre. On the face of things, the idea that alienation can be overcome through theory is quite implausible. For if the form of alienation that Hegel's contemporaries experienced was genuine,¹⁰ it is far from clear how it could be overcome through anything other than a transformation of their social arrangements.¹¹ But once we get a grip on Hegel's understanding of his historical situation, his solution no longer seems bizarre. *If* his contemporaries were alienated because they *failed to understand* their social world and *if* their social world could not be understood without the aid of philosophical theory, then a *philosophical account* of their social world was precisely what they needed.¹² Such an account would allow them to grasp that their social world was a home: by grasping (*begreifen*) this fact, they could come to be reconciled to its arrangements (PR, Preface ¶15). Hegel's diagnosis of his contemporaries' plight may have been wrong, but relative to his understanding of their plight, the solution he proposed was quite reasonable.

10. I address the question whether Hegel can defend the view that his contemporaries were genuinely alienated in Section V.

11. The reader will recall Marx's oft-quoted eleventh thesis on Feuerbach: "Philosophers have only *interpreted* the world in various ways; the point however is to *change* it." "Thesen über Feuerbach," in *Marx Engels Werke* (Berlin: Dietz Verlag, 1983), 3:535 ("Theses on Feuerbach," in *The Marx-Engels Reader*, 2d ed., ed. Robert C. Tucker [New York: Norton, 1978], p. 145).

12. Hegel recognizes that his contemporaries may also have been alienated in part because they lacked a proper understanding of *themselves*. One of the aims of the project of reconciliation is to provide that self-understanding. It seeks to show that modern people are essentially family members, members of civil society, and citizens. The *Rechtsphilosophie* is not just a social theory. It also provides a moral psychology: an account of the modern self that shows that the modern self can be at home in the modern world. As Hegel understands it, becoming reconciled is both a matter of coming to understand the world and a matter of coming to understand the self, but I cannot pursue this aspect of the project of reconciliation here.

Many people, most famously Marx, have held that Hegel believes that reconciliation to the social world is *always* possible.¹³ What has not been sufficiently appreciated is that Hegel denies this. While Hegel does think that theory *can* reconcile, he maintains that it can do so *only if* certain objective social conditions are in place, namely, those that make the social world a home.¹⁴ Hegel takes world history (*Weltgeschichte*) to be the process that brings these conditions into place.¹⁵ He maintains that the social world was not a home during the time of the Roman Empire (*PhG*, 355–59/290–94; *VPG*, 380–85/314–18) or the Middle Ages (*VPG*, 440–91/366–410): the Roman world failed to provide community, and the medieval world failed to allow for individuality.¹⁶ To have attempted through theory to reconcile people to the social world during those eras would have been pointless. What was needed then was not a transformation of people's consciousness but a transformation of their objective social arrangements.

Once we recognize that Hegel thinks that theory can reconcile only when the requisite objective social conditions are in place, we can better understand his relation to Marx. For then it becomes clear that the basic difference between them does not—as has commonly been thought—concern the importance of objective social conditions. That is a point about which they agree. Hegel, like Marx, thinks that *if* the social world is alien, its social arrangements must be transformed in order for it to become worthy of reconciliation.¹⁷ He also agrees with Marx in main-

13. Karl Marx, "Zur Kritik der Hegelschen Rechtsphilosophie: Einleitung," in *Marx Engels Werke* 1:384–85 ("Contribution to Critique of Hegel's Philosophy of Law: Introduction," *Marx Engels Collected Works* [New York: International Publishers, 1975], 3:180–81).

14. I should note that what is at issue here is *social* and not *religious* reconciliation. Hegel thinks that religious reconciliation—reconciliation with God—is possible during periods in which the social world is not a home. But he also maintains that religious reconciliation is no replacement for social reconciliation (*VGP*, 2:588/3:95–96).

15. It is because Hegel believed that world history had changed the world—that is, made it a home—that he could maintain that the point in his time was to interpret it.

16. Hegel thought that the social world of the ancient Greeks was a home—albeit a primitive one. It was *primitive* because it provided no place for "subjectivity"—that is, the exercise of conscience and critical reflection on one's social roles and institutions. Hegel maintained that it was precisely because the Greek world was primitive that it had to be superseded and that humanity was forced to enter a long period of alienation, including the era of the Roman Empire and the Middle Ages, ending only in the modern world (*PR*, §185R).

17. That the arrangements of the social world had to be transformed in order for it to

taining that the social world could not be made a home without a revolution.¹⁸ But, unlike Marx, who thought that that revolution was still to come, Hegel thought it had already taken place—in France in 1789. The basic difference between them is that Hegel affirms and Marx denies the proposition that the modern social world is a home. A secondary difference between them concerns the objective conditions that the modern social world must satisfy in order to be a home. Marx maintains that the modern social world cannot be a home so long as it is capitalist. Hegel contends that a modified form of capitalism is a precondition of the modern social world's being a home (PR, §§189–208).

Now if we generalize the idea of the project of reconciliation, we can think of Hegel and Marx as being engaged in different forms of the same basic enterprise. For then we can say that Marx is engaged in the “political” project of reconciliation and Hegel is engaged in the “philosophical” project of reconciliation.

The *political* project gets its start from the proposition that the modern social world is not a home. It seeks to secure the objective conditions of reconciliation by transforming the central social institutions so as to make them worthy of reconciliation. Instead of seeking to reconcile people to the social world directly, it seeks to change the social world so as to make it worthy of reconciliation. It is “political” in that it seeks to make reconciliation possible through political change.

The *philosophical* project gets its start from the proposition that the social world is a home even though it does not appear to be one.¹⁹ The philosophical project is “philosophical” in that it attempts to reconcile people by providing them with a philosophical account of their central

become a home is a central thesis of Hegel's philosophy of history. See VG. For the corresponding Marxist view, see Marx, “Kritik,” p. 384 (“Contribution,” pp. 180–81).

18. For useful discussions of Hegel's views on revolution, see Jürgen Habermas, *Theorie und Praxis: Sozialphilosophische Studien* (Frankfurt: Suhrkamp Verlag, 1963) (*Theory and Practice*, trans. John Viertel [Boston: Beacon Press, 1973]); Joachim Ritter, *Hegel und die französische Revolution* (Frankfurt: Suhrkamp Verlag, 1965) (*Hegel and the French Revolution*, trans. Richard Dien Winfield [Cambridge, Mass.: MIT Press, 1982]); Michael Theunissen, “Die Vewirklichung der Vernunft: Zur Theorie-Praxis Diskussion im Anschluß an Hegels,” *Philosophische Rundschau*, Special Issue, 6 (1970): 1–89.

19. This is not to say that Hegel simply *assumes* that the social world is a home, for, as we have seen, one of the central tasks of his social theory is precisely to *show* this. The point is rather this: the claim that the best way to overcome people's alienation from the modern social world is to provide them with a philosophical theory finds its ultimate justification in the philosophical theory the project provides.

social institutions that will allow them to see that their world is a home despite appearances. The project attempts to reconcile by providing *rational insight* (*vernünftige Einsicht*) into the true nature of the social world (PR, Preface ¶15).²⁰ There is, of course, a sense in which the philosophical project is “political” too, since, in recommending reconciliation, it recommends a particular political attitude, one of acceptance and affirmation.

Marx takes the philosophical project of reconciliation to be inherently *ideological*; for he thinks that if the social world were a home, there would be no need for social theory.²¹ To say that a project is “ideological” is to say that it is or promotes a form of “false consciousness” (a false account of the social world or its members that stabilizes or legitimizes oppression). Marx argues that the social world is a home only if its workings and the fact that it is a home are *transparent*. On his view, if you need theory to be at home, the world you inhabit is not a home. Hegel, on the other hand, maintains that the social world can be a home without being transparent. His conception of what it is for a social world to be a home is thus strikingly different from Marx’s. It is a conception on which the social world can *both* be a home *and* be in need of theory. Hegel maintains that the historical transformations that made the modern social world a home—which include the emergence of civil society and the modern state—also made the social world appear to be alien, and so gave rise to the need for social theory. He also argues, more generally, that the very conditions of modernity—which include the scale and complexity of the modern state and the fact that modern people demand “rational insight” into their social arrangements—make theory indispensable.²² Let us turn now to the goal of this theory.

20. Hegel goes so far as to identify rational insight with reconciliation, speaking of the rational insight that “is” reconciliation (PR, Preface ¶15).

21. Marx, “Kritik,” pp. 378–91 (“Contribution,” pp. 175–87); “Thesen,” pp. 533–35 (“Theses,” p. 145). For an excellent discussion of this point, see G. A. Cohen, *Karl Marx’s Theory of History: A Defence* (Princeton: Princeton University Press, 1979), pp. 326–44.

22. If Hegel’s understanding of his historical situation is correct—if the modern social world is a home—then there is nothing ideological about his enterprise. But if his understanding of his historical situation is wrong—if the modern social world is not a home—then his project will turn out to be ideological. But the reason the project will be ideological is that it seeks to reconcile people to a social world that is not a home—not that it is philosophical. We need to say against Marx, then, that the philosophical project of reconciliation is not *inherently* ideological. And we need to say with Marx, or in a Marxist vein, that the risk of ideology is inherent in the enterprise.

III

The goal, of course, is *reconciliation*. I want to begin by approaching the concept negatively, considering what it does not mean. My concern in this section is to locate the concept of reconciliation. In the next section, I will provide a positive account of Hegel's philosophical concept of reconciliation.

Reconciliation is the English word I am using to represent the German word Hegel uses, namely, *Versöhnung*.²³ Now the English differs from the German in a number of important respects.²⁴ In its ordinary use, *reconciliation* can mean "submission" or "resignation," which may suggest that the real aim of Hegel's project is surrender and acquiescence—something that would, of course, be objectionable.²⁵ If reconciliation is a matter of submitting to the powers-that-be or resigning oneself to the status quo, who wants it? Better to be alienated than to submit or resign.

But in fact the features of *reconciliation* that give this impression are not shared by *Versöhnung*. *Versöhnung* simply does not mean "submission." Nor does it mean "resignation." You can become *reconciled* to a circumstance that is completely contrary to your wishes, but you cannot (grammatically) become *versöhnt* to it. German does have a word for this sense of *reconcile*—reconciliation as resignation—but it is *abfinden*, not *versöhnen*. Think of it this way: if *Versöhnung* is possible, resignation is unnecessary.

Versöhnung is quite different from resignation. To be *versöhnt* to the social world is to view it in a positive light. *Versöhnung* involves something like complete and wholehearted acceptance or, more precisely,

23. The word *Versöhnung* derives from *Sühne*, which means expiation or atonement. Contrary to appearances, there is no etymological connection between Christian doctrine that God's son (*Sohn*) is the reconciler (*Versöhner*) and the composition of the word *Versöhnen*. Nor is there any etymological connection between *Sühne* (whose Middle High German forms were *süene* and *suone*) and *Sohn*. See Jacob and William Grimm, *Deutsche Wörterbuch* (Leipzig: von S. Hirzel Verlag, 1854).

24. I am indebted to Gisela Striker for discussion of these matters.

25. The negative tone of *reconciliation* is especially clear when the verb is used with the preposition *to*, a usage that suggests that the process of reconciliation is asymmetrical and that the object of reconciliation is a state of affairs that is viewed negatively. One becomes reconciled *to* the loss of a child. The use of the preposition *with*, on the other hand, suggests that the process is symmetrical and that the object of reconciliation is a person who is viewed positively. I become reconciled *with* my friend.

warranted complete and wholehearted acceptance. Implicit in the idea of *Versöhnung* with the social world, then, is the thought that in order for *Versöhnung* to be possible, the social world must be *worthy* of such acceptance.

My point here is that nothing in the word *Versöhnung* suggests that Hegel's project is invidiously conservative or that its aim is surrender or acquiescence. It is crucial, then, that we remember that the English word *reconciliation* carries baggage that the German word does not. This linguistic point does not, of course, settle the substantive question whether the project of reconciliation ultimately collapses into a project of submission or resignation. But it should remove one powerful source of the sense that it *must* come to this.²⁶

Let me also observe that the meaning of *reconciliation* (*Versöhnung*) differs from that of *consolation* (*Trost*).²⁷ These two words are, it is true, very close in meaning. Indeed, if we speak loosely, we may use them interchangeably. Consolation, like reconciliation, is a response to prior disappointment and, like reconciliation, involves a form of acceptance. But, unlike reconciliation, consolation involves *continuing disappointment* at the failure of the world to live up to some deeply rooted expectation. Your spouse dies but you find consolation in the continuing existence of your children. Their existence does not negate the loss, but it does console you. In becoming consoled, you come to accept a situation because you find real but partial compensation for your loss or disappointment (*EL*, §147Z; *VG*, 78/67). If, however, you are truly reconciled—reconciled in the sense of *versöhnt*—you have no need for consolation, because, in being reconciled, you have fully accepted the situation. There is no thought: "Things would be better were they otherwise." It is significant, then, that the aim of Hegel's project is *reconciliation* and not consolation (*VG*, 78/76).²⁸ When the project is complete,

26. I return to the substantive question in Section VI.

27. Freud might usefully be thought of as a resignation-consolation theorist. In *Civilization and Its Discontents* he attempts to persuade people to *resign* themselves to the discontents that inevitably result from the conflict between the instincts and the demands of society and to find *consolation* in sublimation. He argues, in effect, that this conflict generates a split between people and the social world that would make anything that could be properly called reconciliation impossible. See Freud, *Civilization and Its Discontents*, trans. Joan Riviere (London: The Hogarth Press, 1953).

28. Thus Hegel insists: "Philosophy is not consolation, it is more, it reconciles . . ." (*VG*, 78/67).

there should be no lingering disappointment. People should be in a position to fully embrace the modern social world.

If the negative connotations of *reconciliation* make the goal of the project sound too bleak, the positive connotations of *Versöhnung* may make the goal sound too cheery. This worry grows even stronger once we recognize that Hegel's use of the term is even more positive than the ordinary use. For Hegel, *Versöhnung* is more than a matter of acceptance, even full acceptance: to be *versöhnt* to something is to *embrace* it. So, it may well sound as if Hegel must think that being reconciled is a matter of thinking that everything is wonderful.

But Hegel doesn't think that everything is wonderful. Far from it. His outlook is by no means Pollyannaish. He insists that becoming reconciled is compatible with recognizing that the social world contains features that are problematic. More specifically, he maintains that reconciliation is compatible with recognizing (a) that the fundamental features of the modern social world include divorce (PR, §176), poverty (PR, §§244–45), and war (PR, §324R) and (b) that particular families, civil societies, and states will inevitably exhibit defects and imperfections, some of which are quite serious (PR, §258Z; VPRG, 633).²⁹

Indeed, to say that Hegel thinks that becoming reconciled is compatible with recognizing that the social world contains problematic features is at best an understatement. For he thinks that recognizing and accepting this fact is integral to the process of becoming reconciled. You cannot become genuinely reconciled by putting on rose-colored glasses; reconciliation is instead a matter of accepting the social world as a world that contains features that are problematic.³⁰ In this respect Hegel's conception of reconciliation exhibits two qualities I find attractive: realism and sobriety. If there is to be any hope for a conception of reconciliation, it must be one on which reconciliation can be combined with clear-eyed

29. Thus Hegel says: "The state is no pure artwork, it stands in the world, it stands thereby in the sphere of caprice [*Willkühr*], contingency [*Zufalls*], error [*Irrthums*] . . ." (VPRG, 633). More generally, he says, "Where there is finitude, there opposition [*Gegensatz*] and contradiction [*Widerspruch*] always break out again afresh, and satisfaction never gets beyond the relative [*das Relative*]" (VA, 1:136/1:99).

30. Hegel maintains that people attain reconciliation by recognizing (*erkennen*) "reason as the rose in the cross of the present" (PR, Preface ¶15). You cannot recognize reason as "the rose in the cross of the present" without also seeing the cross in which the rose is placed.

recognition of the defects of the world. Part of the appeal of Hegel's project is that it tries to combine these elements.

Clearly there is a tension here: how can Hegel's conception of reconciliation remain realistic without collapsing into a conception of resignation? If, as he argues, divorce, poverty, and war are inevitable, perhaps *resignation* would be appropriate. But Hegel wants more than this: he wants *affirmation*, "das versöhnende Ja" (the reconciling yes) (*PhG*, 494/409). How can he provide an argument for the inevitability of these problematic features without opting for resignation? And how can he suggest that people should accept these features without affirming evil? Why doesn't it turn out that what Hegel ultimately commends is accommodation to evil?

The first thing to note is that Hegel is keenly aware of these difficulties. His social theory is, among other things, a "social theodicy"—a social and political variant of the traditional theological enterprise.³¹ As traditionally conceived, theodicy seeks to justify the ways of God to man. Hegel's social theodicy seeks to justify the ways of society to its members.³² By showing that the world is ultimately good, traditional theodicy seeks to reconcile man to God; by showing that the social world is ultimately good, social theodicy seeks to reconcile people to the social world. A central task of both enterprises is to account for the negative features of the world. Traditional theodicy seeks quite generally to account for the existence of evil in the world. Social theodicy seeks more narrowly to account for the existence of social evils in the world.

The basic line Hegel takes is that divorce and war both have a rational element in the light of which they can be affirmed.³³ He argues that the

31. Thus Hegel says, speaking of world history: "Our investigation is in this respect a theodicy" (*VG*, 48/42). The term "social theodicy" is my own.

32. This contrast is somewhat artificial. Hegel actually thinks that social theodicy is part of a more general philosophical project of theodicy, which resembles the traditional theological enterprise in seeking to reconcile man to God (*Geist*).

33. One of the striking facts about Hegel's treatment of the modern social world is that he does not maintain that poverty has a rational element in the light of which it can be affirmed. Just as divorce is a structural feature of the family and war is a structural feature of the state, so, Hegel claims, poverty is a structural feature of civil society (*PR*, §§185, 244, 245). But Hegel thinks that poverty, in contrast to divorce and war, represents a real evil. The evil of poverty consists in part in material deprivation, but much more fundamentally in the fact that poverty cuts people off from participation in the ordinary practices of social life and thus from the social and spiritual means of reconciliation (*PR*, §242; *VPRHN*, 194–95). On Hegel's view, poverty is an evil first and foremost because it is alien-

possibility of divorce flows out of the fact that marriage is a unity of feeling (PR, §§158, 163, 176) and that feelings are contingent (PR, §176). Feelings being contingent, it is always possible that husband and wife may become “totally estranged” (*total entfremdet*) (PR, §176). People being as they are, it is only to be expected that such conflicts will occur. Divorce is, in effect, the external, legal expression of an irreparable internal split. War, Hegel argues, is necessary in order to preserve the “ethical health” (*sittliche Gesundheit*) of the state (PR, §324R). Periods of prolonged peace, he contends, result in ethical stagnation: people become overly involved in their private affairs, coming to see themselves exclusively as private persons. And war, he argues, uniquely makes it possible for people to come to a concrete appreciation of the fact that they are members of a political, organized community and the importance of the existence of the state (PR, §324R). Hegel also argues that war cannot be prevented by the sort of international organization Kant proposed in his *Perpetual Peace* (a league of nations), since the possibility of such a body is precluded by the sovereignty of the state (PR, §§324R, 333R). He also argues that there must be a plurality of individual states and that this requirement precludes the possibility of forming one common, sovereign world-state. The reason there must be a plurality of individual states has to do with the relation between “individuality” (*Individualität*) and “recognition” (*Anerkennung*) (PR, §§330–31). Very roughly, Hegel’s idea is that in order for individual states to realize themselves as individuals they must be “recognized” as individual states by *other* individual states from which they distinguish themselves (cf. *PhG*, 145–55/111–

ating. Hegel allows that it might be appropriate to try to convince any given married couple not to divorce, but he thinks that there would be something misguided about trying to eliminate the possibility of divorce—the possibility of divorce being intimately connected to marriage’s character as a unity of feeling. And while he allows that it might be appropriate to attempt to prevent the occurrence of any given war, he thinks that there would be something misguided about attempting to prevent wars from ever occurring—war being necessary on his view for the ethical health of the state. But Hegel does not think that there is anything misguided about attempting to provide a general solution to poverty. And indeed, he himself canvasses a number of possible solutions (PR, §245.R), none of which appear to be satisfactory. The fact that poverty represents a structural feature of civil society for which there is no apparent solution poses a fundamental threat to the project of reconciliation as a whole. It also deepens the worry that Hegel’s project of reconciliation will turn out to be ideological after all. I discuss this problem in my forthcoming book. See also Shlomo Avineri, *Hegel’s Theory of the Modern State* (Cambridge: Cambridge University Press, 1972), pp. 147–54; Wood, *Hegel’s Ethical Theory*, pp. 247–54.

19). Given this basic structural situation—that there is a plurality of individual, sovereign states—and given the fact that in the normal course of events states are likely to enter into grievous disputes that cannot be settled through peaceful means, war, Hegel concludes, is inevitable.

Hegel also argues that the defects of particular families, civil societies, and states do not undermine the modern social world's claim to be a home. He maintains that the world is a home because the ideals that underlie the family, civil society, and the state—and are articulated in the *Rechtsphilosophie*—are realized to a significant degree (PR, Preface ¶13).

Now this line clearly needs elaboration—I have done no more than sketch it—and obviously it raises serious difficulties of its own. Among other things, it may heighten the natural suspicion that what Hegel really wants us to do is embrace certain forms of social evil. But, threatening though this line may be, it contributes to the tension that makes Hegel's view interesting: the tension between realism and affirmation, and affirmation and accommodation.³⁴ This tension reflects Hegel's response to a problem *we* can recognize as real, a problem that arises for anyone who grasps that the social world will inevitably exhibit serious defects and imperfections: how are we to come to terms with this fact?

Reconciliation, in Hegel's sense of the term, must not be understood as a state of "perfect harmony." He maintains that people will inevitably come into conflict with the modern social world, even if it is well ordered and even if they are reconciled (PR, §148). More precisely, they will experience conflicts between the separate and particular interests they have as individuals and the obligations they have as family members, members of civil society, and citizens. There will be times when parents will not want to stay at home with their children, workers will not feel like going to work, and citizens will have no desire to pay their taxes.

That such conflicts will occur is no accident. Hegel argues that a well-ordered modern social world will raise its members to have separate and

34. Whether Hegel can *maintain* this tension—whether he can have affirmation without falling prey to accommodation, whether he can have realism without sacrificing affirmation, whether he can have affirmation without sacrificing realism—is a fundamental question of Hegel interpretation I cannot hope to settle here. My aim in this section is to present the perspective within which these questions arise in a way that is sensitive to and expressive of the conflicting strands of this perspective. I am trying to suggest that, whether or not Hegel succeeds in maintaining the tension, the very fact that his project contains the conflicting strands it does makes it interesting.

particular interests—some of which will inevitably come into conflict with the demands of their social roles (PR, §§189–209; VPRHO, 488). He also allows that the obligations people have, say, as family members, will occasionally come into conflict with the obligations they have, say, as members of civil society. A well-ordered social world is a world that generates conflicts.

On Hegel's view, being reconciled essentially involves accepting—indeed embracing—these tensions. His social theory is supposed to show us that the tension between our separate and particular interests and the demands of the social world is a necessary by-product of our individuality. We are also supposed to see that the conflicts between the demands of the family, civil society, and the state are necessary by-products of the social differentiation required for the complete unfolding of the human spirit. Thus conflict and antagonism are internal to Hegel's conception of reconciliation.

They are not, however, final. What is crucial to being reconciled, according to Hegel, is that there be no *fundamental* conflicts between the interests people have as individuals and the demands of the family, civil society, and the state (PR, §§147, 151). Hegel takes this fundamental unity to be a hallmark of a well-ordered modern social world. Such a world will raise its members to identify with the roles of family member, member of civil society, and citizen (PR, §187R; VPRHN, 125). It will also teach them to embrace the norms internal to these roles and regard them as the “substantial” (*substantiell*) component of their self-conception and take the good of their family, civil society, and the state to constitute the “substantial” component of their own individual good (EL, §515; PR, §145Z; VPRHO, 485). At the same time, in a well-ordered social world, the family, civil society, and the state will function so as to promote and foster the individuality of their members and provide them with community (PR, §260; VA, 1:136/1:98). Hence it will be *reasonable* for the members of the social world to embrace the norms internal to the social world's institutions and to regard the good of the social world's institutions as part of their own good. Also, the demands of the family, civil society, and the state in a well-ordered modern society will be organized in such a way that no tragic conflicts between them can occur (PR, §150R): no members of a well-ordered modern social world will face the predicament of Antigone and Creon (see PhG, 327–42/266–78). Moreover, the demands of a well-ordered modern social world will be suffi-

ciently well integrated as to allow its members to lead coherent and non-fragmented lives.

Hegel's conception of reconciliation is thus one that understands itself as preserving conflict at one level and overcoming it at another. Both elements are attractive. The fact that his conception seeks to preserve conflict is attractive because the idea of a perfect harmony is both utopian and dangerous: utopian because unrealizable, dangerous because invidiously anti-individualistic. Moreover, the fact that Hegel is willing to embrace conflict makes his thought quite appealing. He is far too often placed in the camp of the enemies of conflict.³⁵ In fact, Hegel, in contrast to Marx, is one of the great friends of conflict.³⁶ But it is important that Hegel argues that at the most fundamental level conflicts are overcome, for, in so doing, he secures the status of his conception as a conception of reconciliation. Furthermore, the idea that there might be conflict-embracing forms of unity is itself quite appealing (VA, 1:82/1:52). The search for a conflict-embracing higher unity may be in vain, but it is far from obvious that such unity is a crazy thing to look for.

Having located the ordinary and Hegelian concepts of reconciliation, I now want to provide an account of the latter.

IV

Reconciliation, in Hegel's technical sense of the term, refers to both a *process* (VA, 1:81/1:55; VPRJ, 5:107/3:172)³⁷ and a *state*: the process of

35. See Martha C. Nussbaum, *The Fragility of Goodness* (Cambridge: Cambridge University Press, 1986), pp. 51–84; Bernard Williams, "Conflicts of Values," in his *Moral Luck* (Cambridge: Cambridge University Press, 1981), p. 72.

36. Marx did, it is true, think of class conflict as a fundamental motor of human history and to that extent affirmed conflict. But the world the revolution was to bring about was to be essentially free of conflict. The point I have just been emphasizing is that, according to Hegel, the social world at which world history "aimed"—the modern social world—was a world that contained conflict.

37. It is possible to distinguish among a family of processes of overcoming alienation. There is for Hegel: (a) the *historical* process of reconciliation (world history), through which the objective conditions of being at home in the social world are first secured; (b) the *social* process of reconciliation (the normal operation of the modern social world), through which the objective conditions of being at home in the social world maintain and reproduce themselves; (c) the *speculative* process of reconciliation (the result of learning the philosophical theory provided in the *Rechtsphilosophie*) through which people come to be at home in the modern social world. On Hegel's view, the social process presupposes the historical process; the speculative process presupposes the social process and the his-

overcoming alienation from the social world and the state of *being at home in the social world* that is its result.³⁸ Being at home in the social world (*Beisichsein*, *Zuhausesein*), then, is the linchpin of Hegel's project.³⁹ It is the basic concept out of which the concepts of both reconciliation and alienation are constructed. By clarifying it, we can deepen our understanding of the ideal that pulls Hegel's project and the problem that pushes it. I will return to the problem in the next section, after elucidating the notion of being at home in the social world.

My first task, then, is to provide an account of the notion of being at home in the social world. According to Hegel, people—modern people, anyway—are *at home in the social world* if and only if

1. the social world is a home;
2. they grasp that the social world is a home;
3. they feel at home in the social world; and
4. they accept and affirm the social world.

Being at home in the social world (and hence reconciliation) is both an objective and a subjective matter. It is not wholly subjective, since there is an objective condition the social world must meet—that of being a home—if people are to be at home there.⁴⁰ (I specify what it is for the social world to be “a home” below.) But being at home in the social world is not wholly objective either, since there is a set of subjective conditions

torical process; and the speculative process completes both the social process and the historical process.

38. Hegel says that “reconciliation is the movement of making . . . alienation [*Entfremdung*] disappear” (VPRJ, 5:107/3:172), and characterizes the final stage of *Geist's* reconciliation as that in which it is “reconciled in the object with itself” (*in dem Gegenstand versöhnt bei sich selbst*) (VPRJ, 3:85/1:177).

39. Hegel also uses *Beisichsein* and similar phrases to refer to his special conception of freedom. Hegel thinks that in order for the social world to be a home, it must be free and that a social world that is a home is a world in which people can be free. It might be argued that what I shall present as the conditions of the social world's being a home represent what Hegel takes to be the conditions a social world must meet in order to provide freedom. The relation between freedom and being at home in the social world is clearly of enormous importance for Hegel, but I cannot pursue the matter here.

40. This point is worth emphasizing because many people, Marx being the most famous, have maintained that for Hegel reconciliation is purely subjective. The basic mistake people make in thinking about the idea of being at home in the social world is that of conflating it with the idea of *feeling* at home in the social world; the basic mistake they make in thinking about the aim of the project of reconciliation is that of conflating it with the aim of allowing people to *feel* at home in the social world.

people must satisfy in order to be at home (conditions 2 through 4). By “grasping that the social world is a home” I mean coming to know or truly believe that the social world is a home. “Feeling at home” in the social world is a matter of feeling connected to its central arrangements. It involves feeling that one “fits into” the social world and feeling that one “belongs” there. By “accepting the social world” I mean accepting that the social world is arranged as it is, not denying that its central arrangements are as they are, not fixing one’s thoughts on other ways in which it might ideally be arranged, or dwelling on its shortcomings. “Affirmation” is stronger and more positive than “acceptance.” In “affirming the social world” I consent to its central arrangements. To “affirm the social world” is to say yes to it and the way it is arranged. “Affirmation” also involves endorsing and embracing the world’s central social institutions.

We can see from this that on Hegel’s view, the process of coming to be at home—and hence the subjective process of attaining reconciliation—is a matter of *subjective appropriation*. It is by grasping that the modern social world is a home, coming to feel at home there, and accepting and affirming its arrangements that people become reconciled to the modern social world.

Speaking of the social world as “a home” may sound quaint, sentimental, or naive, but this way of speaking is extremely apt. For, as we have seen, on Hegel’s view, a well-ordered social world is a world in which people can *be* at home. The next task is to provide an account of what it is for the world to be a home. I hope it will become clear in the course of this discussion that Hegel’s understanding of what it is for the social world to be a home is neither quaint nor sentimental nor naive.

According to Hegel, the social world is *a home* if there is no significant objective dimension along which people are “split” from it. This reflects the intuitive idea that alienation is a form of *being split* from the social world, that being at home in the world is the circumstance of *not being split* from it, and that reconciliation is the process of *overcoming splits*.⁴¹ Hegel maintains that there are three significant objective dimensions along which people could be split from the social world: *value*, *need*, and *cognition*. These dimensions are “objective” in the sense that people

41. Thus Hegel speaks of reconciliation as the “negation” (*Negation*) of “division” (*Trennung*) and “divorce” (*Scheidung*) (VPRJ, 5:107/3:172).

might be connected or disconnected along them without realizing that they were. Hegel's view, then, is that the social world is a home if it guarantees connection along the dimensions of value, need, and cognition.⁴² Let us consider these dimensions in more detail.

People are connected to the social world along the dimension of *value* if its central social institutions—the family, civil society, and the state—express the basic social values of its members. An institution “expresses” a value if it promotes that value and if that value must be invoked to explain its normal operation. Thus civil society might be said to express the value of individuality; the state, the value of community. People are connected to the social world along the dimension of *need* if they are able to meet their basic social needs by participating in its central social institutions in the normal way. Let us consider the notions of basic social value and basic social need more closely.

The first thing to note is that the basic social values and basic social needs are not needs and values that people have solely in their capacity as social members. They are needs and values people have both as social members *and* as individuals. Thus the basic social needs and basic social values are also basic *individual* needs and basic *individual* values. The point of characterizing them as “social” is to contrast them with needs and values that are “aesthetic,” “religious,” or “philosophical.” “Social values” are values that can be appropriately expressed by institutions such as the family, civil society, and the state. “Social needs” are needs that can be appropriately satisfied within the same institutions.⁴³ Hegel maintains that the social world—civil society and the state in any case—need not express its members’ aesthetic, religious, or philosophical values or meet their corresponding needs in order to be a home. He also

42. A fundamental aim of the *Rechtsphilosophie* is to show that the modern social world secures connection along these three dimensions. More specifically, it seeks to show (a) that were the central social institutions of the modern social world (the family, civil society, and the state) ideally realized, they would secure connection along the dimensions of value, need, and cognition; and (b) that the modern social world actually secures connection along these dimensions despite the fact that particular families, civil societies, and states will inevitably exhibit defects and imperfections.

43. The contrast I am drawing between “the social,” on the one hand, and “the aesthetic,” “the religious,” and “the philosophical,” on the other hand, corresponds to a systematic distinction Hegel draws between the sphere of “objective” *Geist* (in which *Geist* attains external but finite expression in the social world) and the sphere of “absolute” *Geist* (in which *Geist* attains complete and perfect expression in the practices of art, religion, and philosophy).

thinks that it is essential that the state be separate from the church. He associates the demand that church and state be unified with “oriental despotism” and argues that separation between church and state is a precondition for the full and complete development of both.⁴⁴ Thus there is an important respect in which Hegel’s conception of social connection and being at home in the social world is secular.⁴⁵

Hegel maintains that the basic social needs and values come to the same thing: *individuality* and *community* (PR, §§260, 270Z; VRP, 717–18). This overlap reflects Hegel’s anti-Kantian view that (empirical) need and (moral) value do not represent two fundamentally different domains (for example, the empirical and the transcendent). “Individuality,” as Hegel understands it, involves having a set of separate and particular interests (PR, §§182, 187), having the capacity to question one’s social roles and institutions (PR, §5), being able to pursue one’s own separate and particular interests (PR, §§182, 187), being able to assert one’s individual rights (PR, §36), and being able to act in accordance with individual conscience (PR, §136). “Community,” as Hegel understands it, involves identifying with one’s social roles and institutions (PR, §147) and participating in social arrangements characterized by shared trans-individual ends (for example, the survival of one’s family or nation). It

44. Thus Hegel says: “It is therefore so far from the truth that the separation of the church is or has been a misfortune for the state, that it is *only through* the separation that the state could realize its vocation [*Bestimmung*], self-conscious rationality and ethical life [*Sittlichkeit*]. It is equally true, that this separation is the best piece of good fortune that could befall either the church or thought with respect to their freedom and rationality” (PR, §270R).

45. It must, however, be added that there are other important respects in which Hegel’s conception of the social world is *not* secular. He maintains that the church and state share the “same content” (truth) (PR, §270R) and regards the state (or the fact that the state exists) as “the march of God in the world” (*der Gang Gottes in der Welt*) (PR, §258Z; VPRG, 632). He thinks that religion—more specifically, Christianity—functions as the “moment which integrates the state at the deepest level of sensibility and habit [*Gesinnung*],” and he holds that people can become fully and completely reconciled to the social world only if they regard it as the finite expression of a higher form of spirit (God) (PR, §270R). He argues that because religion serves an irreplaceable unifying function, the state can require that its citizens belong to a church—that is, some church or other. On the other hand, Hegel holds that a strong and healthy state can tolerate sects such as Quakers, who reject direct duties to the state on religious grounds (PR, §270R). And he insists that within civil society people must be recognized as having equal rights, whatever their religion. In this sphere, he says, “a man [*Mensch*] counts as such because he is man [*Mensch*], not because he is a Jew, Catholic, Protestant, German, Italian, etc.” (PR, §209R).

would, I think, be natural to say that there was a lack of fit between people and a social world that failed to express the values of individuality and community or meet the corresponding needs.

People are connected to the social world along the dimension of *cognition* only if they can in principle understand the organization, operation, and underlying principles of its central institutions. This condition is not wildly intellectualistic. It reflects the intuitive idea that in order to be at home in the social world, people must *understand* (*begreifen*) their basic social arrangements, and hence that in order to be at home, the social world must allow of comprehension. Of course, Hegel is not saying that a transparent social world that utterly thwarted people's needs would be better than an incomprehensible social world that fully met them. His point is simply that people cannot be fully at home in the social world unless they understand its social arrangements. Human beings, in his view, have a basic cognitive need to understand the world in which they live (*PR*, Preface ¶¶3, 8; *VA*, 1:135/1:98). The world is a home only if it can answer to this need.

This condition does not, however, require that the social world be "immediately" intelligible, that is, intelligible without the aid of theory; the force of the qualification "in principle" is that the social world must be accessible to the intellect through theory. This reflects Hegel's general view that a social world can be a home despite the fact that it cannot be fully understood without the aid of theory. But, I should add, Hegel also maintains that an *ideally realized* social world would include institutions that would foster understanding of social life. Thus in the ideal case, civil society will include corporate groups that will enable their members to understand their place in the social world and see that they are indeed *members* of civil society (and not isolated social atoms) (*PR*, §§250–56). And the state will include an assembly of estates whose public discussion of political affairs will enable citizens to gain insight into the workings of government and come to view themselves as citizens (*PR*, §§314, 315).

Now if we gather together the dimensions of value, need, and cognition, it would be plausible to say that the list they form is *comprehensive*. If people are connected to the social world along these dimensions, they are connected to its arrangements, both epistemically and practically. There would appear to be no significant objective dimension along which people could be *split* from the social world. And so we might ask:

if the social world secures connection along the dimensions of value, need, and cognition, what more could you ask for?

You might say: happiness.⁴⁶

Happiness is not mentioned in the three conditions of objective connection, and so it might seem that Hegel simply leaves happiness out of his conception of what it is for the social world to be a home. But he does not. Hegel contends that in meeting the conditions of need and value, the social world will also promote happiness, for in meeting these conditions it will provide the social preconditions of happiness (the preconditions of happiness that social arrangements can guarantee). A well-ordered Hegelian social world will contain a social sphere—civil society—within which people can effectively pursue their own separate and particular projects and meet their material needs (*PR*, §§182–256). It will also include a system of public administration, whose functions include the provision of welfare and the prevention of unemployment (*PR*, §242,R). And one of the central tasks of the state will be to maintain and support the sphere of civil society and so indirectly support its citizens' pursuit of their happiness (*PR*, §§260,Z, 261, 287, 288; *VPRG*, 635; *VPRHO*, 717–18).⁴⁷ Thus happiness is a goal of a well-ordered Hegelian social world.⁴⁸

But to say that happiness is a goal is not to say that it is guaranteed. Even if the social world met Hegel's three conditions for being a home,

46. Hegel follows Kant in thinking of happiness (*Glückseligkeit*) as the maximal satisfaction of desires. His conception of happiness is thus subjective in that it holds that (a) the content of an individual's happiness is determined by the desires of that individual (and not by the individual's talents and capacities or by the function of a human being) and that (b) the content of happiness may vary from individual to individual. But he does not hold the extreme subjectivist view that identifies happiness with a purely subjective state such as pleasure or euphoric feeling. I am supposing that the interlocutor who raises the question "But what about happiness?" shares Hegel's subjective conception of happiness. On Hegel's view of happiness, see Wood, *Hegel's Ethical Theory*, pp. 53–74. On the distinction between objective and subjective conceptions of happiness, see R. Kraut, "Two Conceptions of Happiness," *Philosophical Review* 88 (1979): 167–97; Wood, *Hegel's Ethical Theory*, pp. 53–56.

47. Hegel denies, however, that providing happiness is the main function of the state (*PR*, §258R). He maintains that the main function of the state is to provide freedom (*PR*, §§257, 258, 260).

48. Hegel says: "It is often said that the goal [*Zweck*] of the state is the happiness of the citizens; this is certainly true: if they do not fare well, if their subjective goal [*Zweck*] is not satisfied, if they do not find that the state as such is the mediation [*Vermittlung*] of this satisfaction, then the state itself stands on insecure footing" (*PR*, §265Z; cf. *VPRG*, 639).

this would not guarantee that people would be happy. Careers would still fail, friends would still leave, illness would still strike, children would still die. And so you might ask: why doesn't this show that the social world could satisfy the three conditions and yet not be a home?

Hegel could reply as follows: Happiness has an essentially individual aspect. It is also especially sensitive to luck. Whether people are happy is partly up to them—how well they manage their lives as individuals within the free scope that the central social institutions allow them—and partly a matter of chance—whether they happen to suffer from accidents or misfortunes that are beyond the control of any scheme of social institutions, however well organized. But since happiness depends partly on factors beyond the control of any scheme of social institutions, it would be unreasonable to demand that the social world guarantee it.⁴⁹ The unhappiness that results from individual decision, accident, or chance—bad though it may be—does not reflect a defect in the social world. If your misfortune results from your own decision, accident, or chance, you have reason to be dissatisfied with your lot, but not with your social world. Purely individual misfortune does not provide a reason for hating or rejecting the social world.

And, in any case, to say that the social world is a home is *not* to say that it meets our each and every wish. It is, rather, to say that there is no significant objective dimension along which we are split from it. What is at issue here is alienation, not happiness. The social world is a home if there is no significant objective dimension along which its members are alienated. You can be at home in the world despite the fact that you are unhappy.⁵⁰ Being at home in the social world and being happy are simply

49. It is perhaps worth noting that Hegel's claim that the social world cannot guarantee happiness does not turn on the subjectivism of his understanding of happiness. Aristotle, who holds an objective conception of happiness (one that identifies human happiness with the fulfillment of the function of a human being), explicitly and famously recognizes that happiness—*eudaimonia*—is prey to a range of contingencies—such as the loss of wealth, honor, and friends.

50. Hegel recognizes, of course, that the person who is at home in the social world and happy is better off than the person who is at home in the social world and unhappy. Hegel is not denying that happiness is a good or that it is a great good. But he wants to insist (a) that a person can be at home in the social world despite being unhappy, and (b) that the person who is at home in the social world possesses a good—indeed a great good—despite being unhappy. And it goes without saying that Hegel does not think that the sort of unhappiness that results from a *correct* understanding of the world is compatible with reconciliation. See n. 52.

different notions. The social world need not guarantee happiness in order to be a home. What it must guarantee is the possibility of being at home.

You might say: Fine, the social world can be a home without guaranteeing happiness. But if the social world's being a home does not guarantee my happiness—or the happiness of its members generally—what's so great about it?

What's so great about it is, in Hegel's view, that it meets a *vital human need*: the need to be *connected* to the social world. When people are at home in the social world, they meet this need and enjoy a very great good. This view reflects Hegel's acceptance of the famous Aristotelian doctrine that the human being is a political animal (PR, §§4, 75Z; VPRHO, 266–67). It is because human beings need to be connected to the social world that alienation is an evil.⁵¹ Think of it this way: Happiness is not the only thing people care about. They also care about being at home in the social world. Being at home in the social world represents an important human good in its own right.⁵²

V

The account of being at home in the social world we considered in the last section allows us to provide a relatively precise characterization of

51. This point requires qualification. Hegel thinks that humanity had to undergo a long period of alienation, which extended from the collapse of the Greek polis to the emergence of the modern state, in order to fully develop its powers and attain complete self-knowledge. He also thinks that, in the modern world, alienation typically plays an important role in the normal development of the individual: it is a stage a person must go through in order to think of herself as an individual. Viewed from *this* perspective, alienation is not a bad thing, but rather a good one. Within a Hegelian framework it is also possible to say that the felt experience of alienation is the only authentic reaction to the objective circumstance of alienation. When the social world is objectively alien, it is fitting and appropriate to feel alienated.

52. Hegel thinks that freedom is the greatest good and that freedom and being at home in the world are coextensive (see n. 39). One is free if and only if one is at home in the world. He also thinks that freedom, unlike happiness, *can* be guaranteed by the social world. A social world guarantees the freedom of its members just in case it satisfies the conditions of being a home. Thus Hegel has a response to the person who says: "Since the social world cannot guarantee happiness, it cannot guarantee what matters most, and so reconciling myself to the fact that the social world cannot guarantee happiness would amount to resigning myself to the fact that the social world cannot guarantee what matters most, and so reconciliation collapses into resignation after all." He can say that reconciliation does not collapse into resignation, since the social world *can* guarantee what matters most, namely, freedom.

alienation: people are alienated if and only if they are not at home in the social world. We can distinguish between three forms of alienation: objective, subjective, and complete.

People are *objectively alienated* if the social world is not a home. Objective alienation is an evil in its own right, apart from its contribution to the feeling of alienation. For, as we have seen, Hegel maintains that people have a deep and abiding need to inhabit a social world that is a home. If this need is frustrated, people suffer an evil, whether they recognize it or not.

The members of the Frankfurt school (Horkheimer, Adorno, and Habermas) believe that under the circumstances of contemporary capitalism, people suffer from "pure objective alienation," that is, objective alienation unaccompanied by feelings of alienation.⁵³ Because it is capitalist, the social world they inhabit is not a home. But because of the influence of ideology, they are blinded to this fact. And so they fail to see their true predicament. Under such circumstances, people do not need a theory of *reconciliation*. What they need is a theory of *ideology* that will provide the enlightenment necessary to begin the task of transforming their social arrangements.⁵⁴

The existentialists (Heidegger, Sartre, Camus) take the view that objective alienation—or something like it—is part of the human condition.⁵⁵ On their view, it is a metaphysical (fixed, nonempirical) fact that

53. Hegel himself may not have recognized the possibility of pure objective alienation. He may instead have thought that objective alienation would always somehow show up in (and for) the person as what I shall call "subjective alienation." In any case, the notion of pure objective alienation plays no role in his thinking. On the other hand, it is clear that pure objective alienation represents a logical possibility within the logical structure of his conception of alienation. Moreover, the members of the Frankfurt school have presented compelling arguments for thinking that pure objective alienation—or, in any case, something close to it—may represent a real possibility. They raise the possibility that to the extent that our social world is not a world of felt alienation, it may be one of pure objective alienation. Let us say, then, that the idea of pure objective alienation, even if not Hegel's, is manifestly Hegelian. For it is clearly built into the logical structure of his thought. We can think of the Frankfurt school as having seen the logical space Hegel provided for this notion and having developed a theory of pure objective alienation—*Ideologiekritik*—that gave content to the notion and connected it to the world. For the observation that Hegel may not have recognized the possibility of pure objective alienation, I am indebted to Frederick Neuhauser.

54. For an excellent discussion of the concept of ideology and the idea of a critical theory, see Raymond Geuss, *The Idea of a Critical Theory* (New York: Cambridge University Press, 1981).

55. Martin Heidegger, *Being and Time*, trans. J. Macquarrie and E. Robinson (New York: Harper and Row, 1962); Jean-Paul Sartre, *Being and Nothingness*, trans. Hazel E.

the universe (including, in particular, the social world) is not a home for us. Part of what it is to be "authentic" is to grasp, accept, and perhaps even affirm this fact. For the existentialists, the task is not to overcome the feeling of alienation by seeing that the world is a home, but rather to have the courage to live in full consciousness of the fact that the world is not a home.

People can be *subjectively alienated* both when the social world is a home and when it is not a home. If the social world *is* a home, people are subjectively alienated if they *fail* to grasp this fact. If the social world is *not* a home, people are subjectively alienated if they *do* grasp this fact. They are also subjectively alienated if they fail to meet any of the other subjective conditions of being at home in the social world. In the standard case, these items go together. It is because people *believe* that the social world is not a home that they feel alienated, and reject the social world.

Hegel thought that his contemporaries suffered from "pure subjective alienation." People experience pure subjective alienation when they are subjectively but not objectively alienated.⁵⁶ Pure subjective alienation is possible on Hegel's view because the social world can appear to be alien despite the fact that it is a home. He maintains that part of the task of becoming reconciled consists precisely in grasping that the social world is a home—and accepting it—*despite* the fact that it is subjectively alienating. This is yet another respect in which Hegel's conception of reconciliation incorporates conflict and antagonism.

Hegel recognizes the logical possibility that the concept of pure subjective alienation may be empty. He understands that he must *show* that the concept has content and that it applies, in particular, to his own historical situation. This is, in effect, the task of demonstrating that the modern social world is a home despite the fact that it appears to be alien, or, in other words, the central task of the *Rechtsphilosophie*.⁵⁷

Barnes (New York: Philosophical Library, 1956); Albert Camus, *The Myth of Sisyphus and Other Essays*, trans. Justin O'Brien (New York: Vintage Books, 1955).

56. To say that people suffer from a form of subjective alienation that is *pure* is not to say that the form of alienation from which they suffer has no roots in the objective features of the modern social world. For, presumably, pure subjective alienation will be rooted in certain objective features of the modern social world (e.g., the scale of the modern state, and the complexity of civil society). To say that the form of subjective alienation from which people suffer is pure is rather to say that none of the features in which their alienation is rooted are such as to make the social world objectively alienating.

57. I do not think that Hegel would maintain that pure subjective alienation could be a

People are *completely alienated* if they are both subjectively and objectively alienated. Hegel thought that people in ancient Rome and medieval Europe were completely alienated.⁵⁸ Marx thought that his contemporaries were.⁵⁹

It is worth emphasizing that Hegel does not take alienation to be a purely subjective phenomenon; some thinkers, most notably Marx, have taken him to hold this view.⁶⁰ It is also worth observing that Hegel takes subjective alienation—including pure subjective alienation—to be a genuine form of alienation. This observation blocks the natural objection that instead of freeing people from alienation, the project of reconciliation shows people that they are not alienated. For on Hegel's view, people who are subjectively alienated do not merely *think* they are alienated or merely *feel* alienated. They *are* alienated. If you are subjectively alienated, you are not at home in the social world; for, as we have seen, being at home in the world includes an essential subjective dimension, and not being at home in the world *is* what it is to be alienated. Thus it would be wrong to say that the project of reconciliation seeks to free people of the *mistake* of thinking that they are alienated when they are not. What it seeks to free them of is a form of alienation that is real.

VI

I would like to close by considering briefly whether the acceptance and affirmation internal to reconciliation preclude engaging in criticism or progressive social action. This is, in effect, to ask whether the project of reconciliation turns out *substantively* to be a project of submission or acquiescence.

It must be said that reconciliation, as Hegel understands it, is incompatible with certain forms of radical or revolutionary action. To be reconciled is, among other things, to believe that no *fundamental* social

prominent feature of an *ideally realized* social world. For, as we have seen, such a world would contain institutions designed to foster understanding and integration. These institutions would serve to prevent or overcome pure subjective alienation and so function as devices of reconciliation. But Hegel clearly does think that pure subjective alienation *can* be a prominent feature of a social world that is sufficiently well ordered so as to be a home. He thought that his social world—while not ideally realized—was sufficiently well ordered so as to be a home, and he took subjective alienation to be a prominent feature of its social life.

58. See p. 170.

59. See p. 171.

60. Marx, "Kritik," pp. 384–85 ("Contribution," pp. 180–81).

transformations are necessary; for to say that the social world is a home is to say that the central arrangements of the family, civil society, and the state—that is, the arrangements described in the *Rechtsphilosophie*—are acceptable. To be reconciled is also to believe that particular families, civil societies, and states do, generally speaking, realize their underlying ideals to a significant degree. As I have said, Hegel believed that the revolutionary transformations required to make the social world a home had already taken place. Accordingly, he maintained that no further revolutionary transformations were necessary.

But being reconciled does not by any means involve accepting each and every feature of the social world. We are to accept particular families, civil societies, and states *only* to the extent that they realize their underlying essential structures (VPRHO, 482). At no point does Hegel endorse the status quo merely because it is in place. To the extent that particular families, civil societies, and states *fail* to realize their underlying essential structures, they are defective and hence the proper object of criticism and reform (EL, §6; PR, §§3, 258Z, 270Z; VPRG, 633; VPRHO, 727). To say that being reconciled involves the belief that no fundamental social transformations are necessary is not to say that being reconciled involves the belief that no social transformations whatsoever are necessary. The very theory that makes it possible to accept the world formed by the family, civil society, and the state—the *Rechtsphilosophie*—also provides a set of standards on the basis of which defective families, civil societies, and states can be criticized.

And so we can see in a general way how Hegel's conception of reconciliation makes it possible to combine acceptance of the social world with clear-eyed recognition of its defects.⁶¹ Within the framework he provides, we can both be reconciled to the social world and struggle to overcome its failings. And we can also both struggle to overcome its failings and be reconciled. The project of reconciliation does not amount to a project of surrender or acquiescence. In this respect, at least, it is not invidiously conservative. My aim in this article has not been to suggest that we should accept Hegel's project of reconciliation. I have simply tried to show that it is worthy of serious consideration.

61. It is not so clear that Hegel's conception of reconciliation makes it possible to combine acceptance of the social world with clear-eyed recognition of the problem of poverty. See n. 33. I address this issue in my forthcoming book.

Abbreviations

Note: Where there are standard English translations, they are listed along with the original. In the text, English pagination follows German pagination and a slash (/). In works cited by paragraph (§), a comma before "R" or "Z" means "and." Thus, for example, "PR, §33,Z" means "PR, §33 and the addition to §33"; "PR, 270,R" means "PR, §270 and the remark to §270."

- Werke** *Hegel: Werke Theorie Werkausgabe.* Frankfurt: Suhrkamp Verlag, 1970. Cited by volume number.
- D** *Differenz des Fichte'schen und Schelling'schen Systems des Philosophie* (1801). *Werke*, vol. 2. Cited by page number.
The Difference Between Fichte's and Schelling's System of Philosophy. Trans. H. S. Harris and Walter Cerf. Albany: State University of New York Press, 1977. Cited by page number.
- EG** *Enzklopädie der philosophischen Wissenschaften III* (1817, rev. 1827, 1830). *Werke*, vol. 9. Cited by paragraph (§) number.
Hegel's Philosophy of Mind. Trans. William A. Wallace and A. V. Miller. Oxford: Oxford University Press, 1971. Cited by paragraph (§) number.
- EL** *Enzklopädie der philosophischen Wissenschaften I* (1817, rev. 1827, 1830). *Werke*, vol. 8. Cited by paragraph (§) number.
Hegel's Logic. Trans. William Wallace. Oxford: Oxford University Press, 1975. Cited by paragraph (§) number.
- PhG** *Phänomenologie des Geistes* (1807). *Werke*, vol. 3. Cited by page number.
Hegel's Phenomenology of Spirit. Trans. A. V. Miller. Oxford: Oxford University Press, 1977. Cited by page number.
- PR** *Grundlinien der Philosophie des Rechts* (1821). *Werke*, vol. 7. Cited by paragraph (§) number. Remarks are indicated by "R," additions (*Zusätze*) by "Z." Preface cited by paragraph (§) number.
Elements of the Philosophy of Right. Ed. Allen W. Wood. Trans. H. B. Nisbet. Cambridge: Cambridge University Press,

1991. Cited by paragraph (§) number. Remarks are indicated by "R," additions (*Zusätze*) by "Z." Preface cited by paragraph (§) number.

- VA *Vorlesungen über Ästhetik*. Vols. 1 and 2. *Werke*, vols. 13 and 14. Cited by volume and page number.
Aesthetics: Lectures on Fine Arts. Vols. 1 and 2. Trans. T. M. Knox. Oxford: Oxford University Press, 1988. Cited by volume and page number.
- VG *Vernunft in der Geschichte*. Ed. J. Hoffmeister. Hamburg: Felix Meiner Verlag, 1955. Cited by page number.
Lectures on the Philosophy of World History: Introduction. Trans. H. B. Nisbet. Cambridge: Cambridge University Press, 1975. Cited by page number.
- VGP *Vorlesungen über die Geschichte der Philosophie*. Vols. 1–3. *Werke*, vols. 18–20. Cited by volume and page number.
Lectures on the Philosophy of World History. Trans. Elizabeth Haldane. New York: Humanities Press, 1968. Cited by volume and page number.
- VPG *Vorlesungen über die Philosophie der Geschichte*. *Werke*, vol. 12.
The Philosophy of History. Trans. J. Sibree. New York: Dover, 1956. Cited by page number.
- VPRG *Vorlesungen über Rechtsphilosophie*. Ed. K.-H. Illting. Stuttgart: Fromman Verlag, 1974. Transcription from K. G. von Griesheim. Cited by page number.
- VPRHN *Philosophie des Rechts: Die Vorlesung von 1819/20*. Ed. Dieter Henrich. Frankfurt: Suhrkamp Verlag, 1983. Cited by page number.
- VPRHO *Vorlesungen über Rechtsphilosophie*. Ed. K.-H. Illting. Stuttgart: Fromman Verlag, 1974. Transcription from H. G. Hotho. Cited by page number.
- VPRJ *Vorlesungen über die Philosophie der Religion: Ausgewählte Nachschriften und Manuskripte*. Vols. 1–5. Ed. Walter Jaeschke. Hamburg: Felix Meiner Verlag, 1983. Cited by volume and page number.
Lectures on the Philosophy of Religion. Vols. 1–4. Ed. Peter

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*The Project of Reconciliation:
Hegel's Social Philosophy*

C. Hodgson. Trans. R. F. Brown, P. C. Hodgson, J. M. Stewart, with the assistance of J. P. Fitzer, and H. S. Harris. Berkeley: University of California Press, 1984. Cited by volume and page number.

VPRW *Die Philosophie des Rechts: Die Mitschriften Wannemann (Heidelberg 1817/18) und Homeyer (Berlin 1818/19)*. Ed. K.-H Illting. Stuttgart: Klett-Cotta Verlag, 1983. Cited by page number.

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Part II

Hegel on Will and Abstract Right

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[5]

THE UNITY OF THEORETICAL AND PRACTICAL SPIRIT IN HEGEL'S CONCEPT OF FREEDOM

STEPHEN HOULGATE

I

SINCE THE EARLY NINETEENTH CENTURY it has been assumed—indeed it has become something of a cliché—that, whereas Kant drew a sharp distinction between theoretical and practical reason and clearly exalted the practical over the theoretical, Hegel insisted on the indissoluble unity of the theoretical and the practical. Whether that familiar picture of Kant is accurate is not something I propose to examine in this essay. However, I do wish to consider to what extent that familiar picture of Hegel is correct. My judgment is that it is indeed correct, but that not enough attention has been paid by commentators to the precise ways in which theoretical and practical spirit are unified in Hegel's philosophy. The aim of this essay is to shed light on the unity of the theoretical and the practical in Hegel's theory of freedom, in particular, and so perhaps to provide a foundation for future work on the relation between Hegel and his German Idealist predecessors.

In §481 of the 1830 *Encyclopaedia*, Hegel states explicitly that “actual free will is the unity of theoretical and practical spirit.”¹ In so far as human beings, in Hegel's view, are not just animals, but are self-conscious, thinking beings, their practical activity—or willing—must involve knowledge and understanding of what they want to

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¹ See G. W. F. Hegel, *Enzyklopädie der philosophischen Wissenschaften im Grundrisse* (1830). *Dritter Teil: Die Philosophie des Geistes*, ed. Eva Moldenhauer and Karl M. Michel (Frankfurt am Main: Suhrkamp Verlag, 1970), [Werke in zwanzig Bänden 10]. All further references to part three of the *Encyclopaedia* will be given in the form: Hegel, *Enc* §481. All translations of passages from this text are my own.

achieve through such activity; and knowledge and understanding, for Hegel, are precisely what is meant by theoretical intelligence.²

This connection between theoretical and practical activity is not simply contingent, but stems from the fact that both practical and theoretical activity are modes of the same basic human activity of thought. The difference between understanding and willing for Hegel is thus simply the difference between the theoretical and the practical attitude or comportment (*Verhalten*) of thought itself, between thought as theoretical and thought as practical. Thought and will are not to be regarded as two distinct mental faculties, therefore; rather, "the will is a particular mode of thought; it is thought as translating itself into existence, as the drive to give itself existence."³

Nevertheless, there is a difference between theoretical and practical activity—between thinking as thinking and thinking as willing—and this difference is set out clearly by Hegel in a handwritten note to §4 of the *Philosophy of Right*. Theoretical intelligence, he writes, involves "considering [what is], letting it be (*es lassen*) and—cognizing [it] as it is, knowing it as *universal*." Practical spirit, on the other hand, entails relating negatively to the world, "changing" it in accordance with a determination that is "posited by me."⁴ Yet, in

² See G. W. F. Hegel, *Vorlesungen über Rechtsphilosophie. 1818–1831*, ed. Karl-Heinz Ilting (Stuttgart: Frommann-Holzboog, 1973–4), 4:107. See also G. W. F. Hegel, *Grundlinien der Philosophie des Rechts*, §4 Addition, ed. Eva Moldenhauer and Karl M. Michel (Frankfurt am Main: Suhrkamp Verlag, 1970) [*Werke in zwanzig Bänden* 7]. Further references to the *Vorlesungen über Rechtsphilosophie* will be given in the form: Hegel, *VR*, 4:107. All translations of passages from this edition are my own. Further references to the *Grundlinien der Philosophie des Rechts* will be given in the form: Hegel, *PR*, §4 Add. All translations of passages from this edition are taken from G. W. F. Hegel, *Elements of the Philosophy of Right*, trans. H. B. Nisbet, ed. Allen Wood, (Cambridge: Cambridge University Press, 1991). I have occasionally altered Nisbet's translation.

³ Hegel, *VR*, 4:102. See also Hegel, *PR*, §4 Add, and Clark Kucheman, "Abstract and Concrete Freedom: Hegelian Perspectives on Economic Justice," *The Owl of Minerva*, 15, no. 1 (Fall 1983): 28.

⁴ Hegel's handwritten notes are not included in the Wood and Nisbet edition of the *Philosophy of Right*, but this note can be found in the Moldenhauer and Michel edition, p. 49. In his lectures on aesthetics, Hegel also claims that "theoretical interest lets individual things be (*läßt . . . die einzelnen Dinge gewähren*)"; G. W. F. Hegel, *Vorlesungen über die Ästhetik* 1, ed. Eva Moldenhauer and Karl M. Michel (Frankfurt am Main: Suhrkamp Verlag, 1970), [*Werke in zwanzig Bänden* 13], 59–60 (my translation). By contrast, Stanley Rosen argues that "theory originates in the process by

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spite of this clear difference between letting things be and negating and changing them, if theoretical and practical spirit are both modes of thought, then human beings will be required by their nature as thinking beings to engage in both theoretical and practical activity and not to neglect one for the sake of the other. In fact, the fully developed human spirit will be the explicit unity of theoretical and practical activity: the will which knows itself as will, understands all that it means to be will, and wills (or lets itself be determined by) what it understands willing to entail.⁵

II

The first thing to note about theoretical intelligence, Hegel says, is that it finds itself "externally determined" by the given content of sensation; that is to say, it sees colors, hears sounds, feels pressures, and so on, which it does not produce from within itself.⁶ The second thing to note is that theoretical intelligence regards the sensations it has as stemming from, and as constituting perceptions of, objects which are different from us. "When I touch something hard," Hegel says, "I feel a pressure, but I say straightaway that the pressure comes from something hard."⁷ This idea that what I perceive is *something hard* is not contained in the sensation itself, but, as Hegel argues in the *Encyclopaedia*, is the result of an act of consciousness whereby the mind "separates this [sensory] material from itself and gives it initially the determination of *being*."⁸ Hegel would thus appear to agree with Kant that the mind must be able to form for itself

which the world is *assimilated* into the subject" (my emphasis); see Stanley Rosen, "Theory and Practice in Hegel: Union or Disunion?" in *Hegel's Social and Political Thought*, ed. Donald P. Verene (New Jersey: Humanities Press, 1980), 38.

⁵ See Hegel, *Enc*, §481.

⁶ See Hegel, *VR*, 4:103. For Hegel's full account of theoretical intelligence, see *Enc*, §§445–68. See also William deVries, *Hegel's Theory of Mental Activity* (Ithaca: Cornell University Press, 1988) and David F. Krell, *Of Memory, Reminiscence and Writing* (Bloomington: Indiana University Press, 1990), 205–39.

⁷ Hegel, *VR*, 4:103.

⁸ Hegel, *Enc*, §418.

a conception of objectivity distinct from and other than subjectivity, if it is to be conscious of a world outside of itself, and that, consequently, (as Kant puts it) "though all our knowledge begins with experience, it does not follow that it all arises out of experience."⁹ (Unlike Kant, however, Hegel believes that the same consciousness is the source of our awareness of objectivity and of the immediacy of being, whereas Kant distributes our awareness of objectivity and immediacy amongst the two separate faculties of understanding and intuition.)¹⁰

Both sensation and consciousness are important to theoretical intelligence, yet neither one by itself constitutes the genuinely theoretical moment in knowing. Consciousness is theoretical to a degree in that it conceives of things as distinct from subjectivity and as *being* whatever they are, and so could be said to "let them be." However, for consciousness, "the object is external, an other for us, an other side for us," and so cannot be said to reveal itself fully to, and so be fully known by, the subject.¹¹ The object is only known properly when what it is is understood to be disclosed in thought. Thought thus constitutes the genuinely theoretical, cognitive moment in human subjectivity.

Thought begins from the perspective of consciousness and so accepts initially that objects are external to consciousness, existing outside or over against us in time and space. However, the distinctive activity of thought is to come to the recognition that objects are not just to be regarded as external to us, but that what objects are is in some sense revealed in, and present in, thought itself. When I conceive of something in thought, therefore, I am not simply forming an image or representation of something, or merely thinking "about" something other than myself; rather, I am regarding the objective character of the thing—what the thing itself *is*, its very nature and form—as brought to mind *in* the thought itself. In so doing, I am finding the truth of the object in my *own* thinking and so, as Hegel

⁹ Immanuel Kant, *Kritik der reinen Vernunft*, ed. Raymund Schmidt (Hamburg: Felix Meiner Verlag, 1990), B1. The translation is taken from *Immanuel Kant's Critique of Pure Reason*, trans. Norman Kemp Smith (London: MacMillan, 1929).

¹⁰ See Hegel, *Enc*, §418, and Kant, *Kritik der reinen Vernunft*, B74–5.

¹¹ See Hegel, *VR*, 4:103.

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puts it, am taking away the strangeness of the object and making it mine.¹² This does not mean that I come to regard objects and their perceived qualities as mere "posits" of my intellect, as really only existing "in my mind" rather than in the world; thought is not idealistic in this sense. On the contrary, thought affirms the genuine objectivity of what it thinks and understands things to be. Thought regards itself as precisely that which lets the true nature of things be known, as that which finally lets their law-governed structure or form, which the eyes cannot see and the fingers cannot touch, become evident. Thought thus does not consider what it understands there to be to be merely what *it* understands there to be, but rather to be what there truly *is*. In fact, it regards itself as disclosing what *is*, more thoroughly than any other activity of the mind.¹³

My purpose here is not to defend Hegel's conception of thought, nor to explore all the difficulties it might entail, nor even to provide a full explanation of what Hegel means. It is simply to draw attention to three important features of the theoretical "attitude" of thought in Hegel's account. The first is that thought is *subjective*—is always my thought—since what I think is within me in a way that what I see is clearly not; the second is that thought is not utterly subjective, since what I understand is something *universal* (such as a concept, form or a law), and is thus not peculiar to my perspective on the world but something that can be understood by all;¹⁴ and the third is that thought is thoroughly *objective*, since what I understand there to be is what I understand and know there actually to be. By insisting on this latter point, of course, Hegel is clearly aligning himself with the ancient metaphysical tradition, which stretches from Parmenides through Plato to Descartes and Spinoza, and which considers "the determinations of thought to be the *fundamental determinations of things*."¹⁵

Now Hegel would by no means deny that, at least in the case of natural objects (if not in the case of the self), sensation and intuition

¹² See Hegel, *VR*, 4:103–5.

¹³ See Hegel, *Enc*, §465.

¹⁴ See Hegel, *VR*, 4:104–5.

¹⁵ G. W. F. Hegel, *Enzyklopädie der philosophischen Wissenschaften* (1830). *Erster Teil: Die Wissenschaft der Logik*, §28; ed. Eva Moldenhauer and Karl M. Michel (Frankfurt am Main: Suhrkamp Verlag, 1970), [*Werke in zwanzig Bänden* 8].

are needed for us to be aware of something. However, Hegel's claim is that in so far as we are aware of something we perceive as *being there*, as actually existing in the world, it is consciousness and, even more importantly, thought—not some distinct, nonintellectual form of intuition—that constitute our awareness of such being. Sensuous consciousness, Hegel tells us, is aware of the perceived object as “something existing” (*ein Seiendes*);¹⁶ and thought is the awareness that the universal structures we understand the world to have are indeed what there is. In this respect, by thinking of consciousness and thought as the sources of our awareness of *being*, Hegel departs most obviously from the position of Kant. For Hegel, in contrast to Kant, thought and consciousness could be said to be “intellectual intuition”; and this intuitive side to thought has, as we shall see, profound consequences for Hegel's conception of practical spirit. It is to Hegel's account of practical spirit that we therefore now turn.

III

We saw above that in his handwritten note to §4 of the *Philosophy of Right*, Hegel defined human practical activity as bringing about some change in the world in accordance with a determination that is “posited by me.” If one is to bring about change in this way, one must not only have some conception of what is to be brought about; one must also be able to conceive of the possibility of change being effected—that is, of the world becoming a different place to live in and of one's own activity making that difference. Without understanding that the world *can* be changed and that I *can* bring about such change, I could not regard myself as a practical being. Indeed, my very identity as a practical being lies in knowing myself to be the source of possible changes in the world that follow from as yet unrealized possibilities conceived and “posited by me.”

Such a consciousness of oneself as essentially the source of new possibilities involves what Hegel refers to as a “negative determination,”¹⁷ that is, an awareness that what is now the case need *not* be,

¹⁶ Hegel, *Enc*, §418.

¹⁷ Hegel, *PR*, §4, handwritten note.

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that one's activity is not simply restricted to sustaining what at present exists, and that one is able to bring about through one's own activity what is not yet the case. This ability to say "no" to what is, to look away from what is now the case and to conceive of other possibilities, is referred to by Hegel as the act of abstraction.¹⁸ It is only because the mind abstracts from the specific situation it finds the world to be in that it can conceive of bringing about what is not yet the case. Furthermore, it is only because we abstract from the specific qualities and characteristics we find ourselves to have that we can conceive of as yet unrealized possibilities for ourselves.

In so far as I abstract in this way from what I find myself to be, and understand that, as essentially practical, I can always project new possibilities for myself (and the world), I understand that I am not fixed or defined by whatever I find myself to be, by my nature, talent, sex, and so on. That is to say, by understanding myself as essentially the source of new possibility, I understand that what I "am" is ultimately not determined, but is instead essentially indeterminate.¹⁹ This consciousness of myself as indeterminate, as sheer possibility—as the possibility even of voluntary death—is, Hegel explains, nothing but the pure, abstract thought of oneself.²⁰

The reason why Hegel regards practical spirit or will as a form of thought should now be clear. We may imagine that practical activity is fundamentally "material," but I can only engage in practical activity to the extent that I understand myself to be the source of possibility and regard myself as free to change or negate any given situation in the world or characteristic in myself in the light of possibilities conceived and "posited by me." In so far as I regard myself as essentially the source of new possibilities for the world and myself, I understand that I can abstract from whatever I find the world or myself to be at present. This, however, means that I regard what I "am" as ultimately indeterminate; and to regard oneself in this way is nothing other than to conceive of the pure indeterminate thought

¹⁸ Hegel, *VR* 3:112.

¹⁹ See *VR*, 3:111–12. See also David Kolb, *The Critique of Pure Modernity. Hegel, Heidegger and After* (Chicago: University of Chicago Press, 1986), 29.

²⁰ See Hegel, *VR*, 4:112. See also G. H. R. Parkinson, "Hegel's Concept of Freedom," in *Hegel*, ed. Michael Inwood (Oxford: Oxford University Press, 1985), 159.

of oneself. My practical freedom and will is thus founded on the abstract thought of myself as essentially the power of abstraction, that is, on the abstract thought of myself as "this *absolute possibility* of being able to *abstract* from every determination in which I find myself or in which I have placed myself."²¹ In Hegel's view, therefore, I conceive of myself as a practical being that is *able* to abstract through an act of *actual* abstraction, namely, through an act of abstract *thought*.

It becomes clear in subsequent paragraphs of the *Philosophy of Right* that practical spirit does not just involve this abstract thought of oneself, but also entails making specific choices, deciding to satisfy these desires and not those, and so to settle on certain determinate possibilities rather than others. Nevertheless, if one's choices are to be understood as the expression of genuinely practical activity and as stemming from the freedom of the will, then, Hegel believes, one must preserve, together with an awareness of one's specific desires and interests and the specific possibilities one elects to pursue, a sense of one's ultimate indeterminacy, of one's infinitely variable *ability* to . . . , of oneself as possibility. That is to say, one must preserve the sense that, although one has settled on this possibility rather than that, one is not bound by any of them and could always settle on something else. (One should note that Hegel is not yet thinking here of that practical spirit that limits its possibilities by taking into account the actual character of the world in which it acts and the actual consequences of its actions. We only meet this form of the free will in the section on morality. What Hegel is describing at the moment is rather the self-indulgent subject which takes delight in its own thought of what is possible, of what it can do. Such a practical spirit finds enjoyment (*Genuß*) in its own sense of power and arbitrariness, in its own ability to effect change.)²²

Hegel notes that there is an essential ambiguity in the will's abstract thought of itself as indeterminate. By abstracting itself from all specificity and determinacy, and by withdrawing into the pure thought of itself as possibility, the will frees itself from whatever it merely finds itself to be. In this way, the will withdraws out of the

²¹ Hegel, *PR*, §5.

²² See Hegel, *Enc*, §§444, 476–7.

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sphere of what it is given to be by nature and history, into the sphere of its own pure possibility and choice. This act of abstraction or withdrawal thus constitutes an act of what Hegel calls "reflection" into oneself.²³ It is the act whereby I become aware of myself as wholly myself, as I.

Yet, at the same time, as we have seen, by abstracting from all that I find myself to be, and by constituting myself as pure I, I render myself wholly indeterminate. I thus cut myself off from all the specific features—such as natural characteristics, age, sex, nationality, and so forth—which distinguish me from others, and so give myself an abstract identity which is indistinguishable from that of other free wills. Indeed, I give myself an identity which is quite universal, that any free will has and must have if it is to be free. "By saying I, I renounce everything. . . . This is the absolute abstraction of the universal, the abstract infinite, the positing of oneself as wholly universal."²⁴

By conceiving of myself as pure I, I thus come into an identity that is utterly mine, that constitutes my own inner freedom, and one that is also utterly universal, and so not just mine, but rather the identity that all free wills share.²⁵ When practical spirit or will understands and explicitly recognizes that freedom does not just lie in its own possibilities, but is rather the universal property of all thinking beings, then practical spirit becomes explicitly theoretical once again, because one of the defining features of theoretical intelligence for Hegel is that it is consciousness of universality.

This is the point at which the truly free will emerges. The truly free will, for Hegel, is thus the unity of theoretical and practical spirit, the unity of intelligence and will—the will that does not just promote its own arbitrariness, but rather wills what it understands freedom to be, namely, something universal.²⁶

IV

What I propose to do for the remainder of this essay is sketch out how the idea of the free will as the unity of theoretical and practi-

²³ Hegel, *VR*, 3:114.

²⁴ *Ibid.*, 3:112; see also *VR*, 3:158.

²⁵ See Rosen, "Theory and Practice in Hegel," 35–6.

²⁶ See Hegel, *Enc*, §481; *VR*, 3:150; *PR*, §21.

cal spirit determines the development of the concept of the will in Hegel's *Philosophy of Right*. What becomes apparent in Hegel's account is that the will or practical spirit develops and gains in freedom as it is educated into being fully theoretical, that is, as it comes to understand better what freedom entails. The process whereby the will is fully liberated is thus, in Hegel's view, "theoretical in nature" (*diese Befreiung ist theoretischer Natur*).²⁷

I have already indicated that this theoretical education and liberation of the will involves the recognition of the universal character of freedom. However, theoretical intelligence is also committed to the idea that what it understands (rather than imagines) there to be, is in fact what there *is*. Accordingly, as the will becomes explicitly theoretical, its conception of the modality of freedom is subtly changed. It understands that freedom is not just possibility, but *is* such possibility, is the actuality of possibility, and so is actual being-there or *Dasein* as much as it is possibility. As Hegel himself words it, the will learns that "it is not mere possibility, predisposition, or *capacity* (*potentia*), but the *infinite in actuality* (*infinitum actu*)."²⁸

Kant would no doubt regard this shift in the way freedom is regarded as quite illegitimate, since, for him, merely understanding oneself as free, without any intuition through which my freedom would be given to me, is not enough to assure me that I *am* free.²⁹ However, for Hegel, in contrast to Kant, freedom is not something that needs to be given in intuition to be known as actual; it is established as actual by thought alone. This is because Hegel does not think of freedom as the characteristic of some putative "object" called the self, to which one would need to have some kind of access in order to confirm that it is free. Rather, he thinks of freedom—at least initially—as consisting in nothing but the simple act of abstracting and thinking of myself as I, as indeterminate possibility. For Hegel, then, in so far as I think of myself as I—as free—I both conceive of myself as a free "I" through that act of abstraction and am free simply in performing that very act. In the case of natural

²⁷ Hegel, *VR* 4:108.

²⁸ Hegel, *PR* §22.

²⁹ See Kant, *Kritik der reinen Vernunft*, B157n. and Henry Allison, *Kant's Theory of Freedom* (Cambridge: Cambridge University Press, 1990), 248.

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objects, Hegel believes that thought (and consciousness) supply our awareness of being, but he accepts that the mind nevertheless needs sensation and intuition, since knowledge of the natural world involves the thought (and consciousness) that what one *perceives* is real. In the case of the I, however, thought alone without intuition and sensation is enough to assure us that we are free, since our freedom consists in nothing but the act of thinking of ourselves as free. (In this, of course, Hegel is close to, indeed indebted to, the early Fichte.)³⁰

When the will becomes theoretical and changes its understanding of the modality of freedom in the way I have described, its fundamental stance or comportment (*Verhalten*) towards its own freedom changes. It ceases to regard the pursuit of its own arbitrary freedom and the projection of its own infinite possibilities as its exclusive concern, and acknowledges that, since freedom is actual in the act of abstraction, freedom is to be recognized for what it *is*, for what that act of abstraction actually entails, and not just for what I would like it to entail. The free will is practical; it locates its freedom in the withdrawal into its own indeterminacy and self-determination. However, as theoretical spirit, the will also recognizes that its freedom and self-determination are not simply under the will's control, but are whatever they are. It therefore recognizes that, in so far as it seeks to remake the world in the light of its own freely conceived possibilities, its free conception of those possibilities cannot be absolutely arbitrary but has to be informed by a regard for what freedom itself is and will turn out to be. "The free will is active," Hegel says, "[and] recognizes only something posited by itself, . . . acknowledges only its own. But what is produced by it is essentially not something only produced by it, but that which is in and for itself (*das An und für sich seiende*), and [the recognition of] this falls on the side of the theoretical."³¹

When freedom is recognised by the will as its own, and also as universal, and also as something actual and objective, as a *Dasein* or "existence" which is to be acknowledged and respected and not

³⁰ "*Sich selbst setzen und Sein sind, vom Ich gebraucht, völlig gleich*"; Fichte, *Fichtes Werke*, ed. Immanuel H. Fichte (Berlin: de Gruyter, 1971), 1:98.

³¹ Hegel, *VR*, 3:110.

abstracted from at will, freedom is understood as *right*. Right, for Hegel, is thus simply the recognised "*existence of the free will*."³²

The person or free will as the bearer of what Hegel calls "abstract right" exhibits theoretical intelligence to the extent that it understands right and personhood to be universal and to be respected as the *Dasein* of freedom. Yet the person is at the same time practical in that it understands its freedom to lie in its "consciousness of itself as a completely abstract 'I'."³³ As a person, therefore, "I know myself to be free, free in myself, abstracting from everything" and withdrawing into the realm of my own possibilities and arbitrary choices—except that I now regard myself and all other persons as having the actual inalienable right to such abstract freedom.³⁴ Freedom as personhood is thus the universal freedom of abstract individuality. That is to say, right is always my (individual) right, my right to do and appropriate whatever I please—provided that I respect the rights of all persons to do the same.³⁵

My right to do and appropriate whatever I choose is contained in the universal right of persons to do and appropriate whatever they choose. However, precisely because "as *this* [person] I know myself to be free, free in myself, abstracting from everything,"³⁶ it can seem to me that I can abstract my own freedom from the universal freedom of all persons, and pursue my own possibilities to the exclusion of the rights of others. When I do this, I commit wrong.

It should be noted that, in Hegel's view, the idea that my freedom as a person is exclusively my own personal freedom is an illusory effect or *Schein* created by the very idea of the rights of the abstract person.³⁷ My *right* is always *my* right—my right to be unconstrained in my choices, except by the rights of others also to be so unconstrained. However, as a result, the very idea of right as my right provides a constant temptation to me to assert my own freedom and my own possibilities in abstraction from those of others. When I do abstract my own freedom from its embeddedness in the universal

³² Hegel, *PR*, §29.

³³ *Ibid.*, §35.

³⁴ Hegel, *VR* 3:191; see *PR* §35 Add.

³⁵ See Hegel, *PR* §36.

³⁶ Hegel, *VR* 3:191.

³⁷ *Ibid.*, 3:283–4; see *PR* §83 Add.

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freedom of personhood, the practical side of the will—the side which abstracts from whatever it finds itself to be—abstracts itself from what the theoretical side of the will understands freedom actually to be (namely, something universal). For Hegel, therefore, the will of the criminal is simply “the abstraction (*Abstraktum*) of the I will.”³⁸

Crime, however, is based on an illusion—the illusion that my own freedom can be abstracted as I please from the intrinsically universal freedom of personhood. In so far as I succumb to this illusion and do so abstract from the universal character of freedom, I cause the universal character of freedom as right (which must be respected) to be reasserted against me in the form of just punishment. By not allowing my criminal violation of the rights of others to stand, and by thus “negating” my crime, punishment reestablishes the authority and validity of rights as the rights of all persons that have to be respected *by* all persons. But, of course, the criminal is himself a person and a bearer of rights. What is reestablished in punishment is thus the inviolability of the criminal's own rights as a person; and “in so far as the punishment . . . is seen as embodying *his* own right, the criminal is *honored* as a rational being.”³⁹ And yet in punishment, right, including the criminal's own right, is restored by force against the criminal will.

What is interesting about crime and punishment in Hegel's account is that, by abstracting themselves from the universal dimension of their own freedom as persons, criminals turn that universal dimension of their own freedom against themselves, that is, turn it into an abstract, external power or “essence” that negates their purely personal freedom in the name of the universality of right.⁴⁰ Universal freedom and right do not, however, automatically constitute such an abstract power over the individual, and would not do so if individuals did not abstract themselves from, and so disregard, the universality of freedom. The problem is that, in the sphere of abstract right, the illusion that the individual has the right to do whatever he or she pleases is an irreducible effect of the very idea of individual right. It is therefore always a possibility that bearers of individual rights will assert their own individual freedom abstractly and so violate the

³⁸ Hegel, *VR* 4:552.

³⁹ Hegel, *PR* §100; see *VR* 4:283.

⁴⁰ See Hegel, *VR* 3:283; *PR* §82 Add.

rights of others and commit a wrong. Since this is the case, right has to establish its universal character by explicitly differentiating itself from, and dissolving, the illusion that freedom lies in sheer individual arbitrariness.⁴¹ This occurs, as we have seen, in punishment.

The will that acknowledges and internalizes the explicit difference between individual arbitrariness and universal individual freedom and right, is the *moral* will. The moral will frees itself from the illusion that its theoretical understanding of freedom as right is merely in the service of its practical interest in pursuing its own possibilities, and fully accepts that freedom is not just its own but is in itself something universal. In the sphere of morality, the theoretical moment of the will thus gains a certain autonomy, an autonomy evident in a variety of features of the moral will.

The moral will recognizes, for example, that it cannot simply insist on pursuing its own possibilities untrammelled, because its actions have actual consequences that it cannot control and, as a thinking being, it must anticipate and take account of such consequences in determining what it is to do. The moral will acknowledges what Hegel calls "the right of the *objectivity* of the action."⁴² The moral will also recognizes that it can only pursue its own interests and welfare in so far as it furthers the interests and welfare of others. It also, of course, acknowledges the demands of universal duty.⁴³

Yet, the moral will is the will for whom the demands of universal freedom and right are no longer imposed from the outside in the form of punishment. This is because the moral will has internalized the demands of universal freedom and right and holds itself responsible for taking those demands into account in whatever it does. Indeed, the moral will claims the right to bind itself to respect the demands of others and not simply to be forced into such respect. The moral will thus claims the right to be able to work out for itself what the actual consequences of its actions will be and only to be held responsible for what it intends through its actions;⁴⁴ it also claims the right to determine for itself what duty requires of it and

⁴¹ See Hegel, *VR* 4:266; *PR* §82 Add.

⁴² Hegel, *PR* §§120, 118.

⁴³ *Ibid.*, §§125, 133–5.

⁴⁴ *Ibid.*, §§117, 120.

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only to recognize what it understands to be good.⁴⁵ From this point of view it becomes apparent that, even though the moral will does possess the theoretical understanding that it is bound in its actions by the actual conditions it encounters in the world and by the universal freedom of others, this will is still under the sway of the practical concern to determine for itself and out of its own understanding what is required of it. The moral standpoint thus lays claim to what Hegel calls the "right of the subjective will" according to which "the will can *recognize* something or *be* something only in so far as that thing is its *own*, and in so far as the will is present to itself in it as subjectivity."⁴⁶

For all its attentiveness to what it is required to do, the moral will, for Hegel, is dominated by the specifically practical concern to determine itself, to be its own lawgiver, and to pursue possibilities and obligations which ultimately stem from its own insight and understanding. Such a will is therefore still ultimately an abstract will, because in its very recognition of the rights of others it draws back into the sphere of its own freedom and self-determination and regards itself as ultimately responsible for such recognition.

The moral will, for Hegel, is dominated by the practical mode of thought, even though it includes an explicit theoretical interest in freedom as universal. In the idea of the good as duty, or what I ought to do, we can see two ways in which the theoretical moment is subordinated to the practical. On the one hand, in so far as I ought to do what is good, I conceive of doing good as something that is still ahead of me, still as yet beyond me, abstracted from me, something to be achieved by me in the future. The moral will does not yet understand its actions as already good now and does not understand the good itself as actually present in its actions. Accordingly, the moral will lacks the full theoretical understanding of the good as actually existing—as actually secured—right and welfare. Theoretical understanding, we remember, is (as well as the awareness of universality) the awareness of what is. In the case of the moral will, however, which knows only that it ought to do good, not that it is good, "self-determination is still the pure restlessness of activity that

⁴⁵ Hegel, *PR* §§132, 137.

⁴⁶ *Ibid.*, §107.

as yet has come to no 'what is' " (*die reine Unruhe der Tätigkeit, die noch zu keinem "was ist," gekommen ist*).⁴⁷

On the other hand, in so far as I recognize that I ought to do good, I recognize that obligation as stemming from within me, from my own nature as a free being rather than from some external authority. If the good were simply an end in itself for me, all I would be able to say is that I *must* pursue it, that I am compelled by the very nature of the good to pursue it. However, the idea that I ought to will the good indicates, for Hegel, that I am compelled to will the good by my own nature as opposed to some external force. To the extent that I understand that I ought to will the good, therefore, I also understand that my own freedom requires of me that I do so, that the pursuit of the good is my own objective duty.⁴⁸ Consciousness of the ought is thus always consciousness that I ought, consciousness of one's own inner compulsion, and to that extent belongs more to the practical side of the will than to the theoretical.

V

In this essay I am trying to interpret the free will as the unity of theoretical and practical spirit. At the level of abstract right, the will is theoretically aware that it is free and that the freedom of the person is universal. However, since the freedom which the will knows itself to have—the right to do what one pleases provided that the rights of others are respected—is still only a modification of the abstract, practical freedom of the arbitrary will, the theoretical consciousness of right as *individual* right tempts, indeed in some ways encourages, the person to withdraw into his own abstract self-identity and commit wrong.

In the moral will, the theoretical moment is given greater independence, since the moral will knows explicitly that it cannot just do what it wants to, but is bound to will the universal for its own sake. However, the practical side of the will still dominates, since the moral will understands everything it wills, including both its own interests

⁴⁷ Hegel, *VR* 3:338; see *PR* §108 Add.

⁴⁸ See Hegel, *VR* 3:417; see *PR* §133 Add.

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and the content of its duty, to be determined by itself and its own reason, rather than something else.

In the *ethical* will the moment of theoretical understanding is finally given equal status with the practical will. The ethical will is theoretical in that, like the moral will, it knows freedom to be universal, to be the freedom of all free individuals, but, unlike the moral will, it understands freedom in the form of right and welfare to be actually present and realized in the world. It does not just regard the good as what we ought to do, but as "the living good which has its knowledge and volition in self-consciousness, and its actuality through self-conscious action," and which thus constitutes an "existing world."⁴⁹ The ethical subject knows that the laws and institutions that it regards as constituting the "substance" of freedom actually exist and that they do not just hold out the promise or possibility of freedom or oblige us to pursue it, but actually secure right and welfare. As such, of course, ethical subjectivity can only emerge where the laws and institutions do in fact secure right and welfare—that is, in a healthy rational society or state—and so is not available to all people at all times in history.⁵⁰

The ethical subject is not, however, a purely theoretical one. Its freedom does not just consist in knowing that existing laws and institutions secure its rights and welfare; nor are these laws and institutions understood simply to be given contingent realities that exist in the world in utter indifference to and independence of my freedom, in the manner of natural objects.⁵¹ The ethical subject is also a *practical* one which acts in order to realize its own possibilities and pursue its own interests, and which works to make a difference in the world. Moreover, the ethical subject recognizes that the institutions that secure freedom and welfare only exist in the understanding and action of practical beings who labor in order to secure their rights and welfare. For the ethical will, therefore, ethical life has "its actuality through self-conscious action."⁵²

⁴⁹ Hegel, *PR* §142.

⁵⁰ See Adriaan Peperzak, "Hegels Pflichten-und Tugendlehre. Eine Analyse und Interpretation der 'Grundlinien der Philosophie des Rechts' §§142–156," *Hegel-Studien* 17 (1982): 101.

⁵¹ See Hegel, *PR* §146.

⁵² See *ibid.*, §142.

Yet, the practical activity of ethical subjects does not simply emanate from their own subjective, arbitrary interests, or from what they think such activity ought to be. Rather, such activity emanates from the will's theoretical understanding of what freedom in the world actually is. The ethical subject, therefore, understands its own interest to lie in acting in accordance with the laws and institutional expectations that it knows actually secure right and welfare. This ethical will represents the most complete unification of theoretical and practical spirit we have encountered so far. It is the spirit that understands what freedom is, that acts in order to bring about (and sustain) the freedom and happiness of itself and others, and that allows its own practical activity to be informed and grounded by what it understands the maintenance and furtherance of its own freedom (and that of others) actually to require. Furthermore, its theoretical understanding does not just stand over and control its practical activity; it informs practical activity itself as the habit of mind expressed in practical activity.⁵³ The result is that the ethical subject living in ethical institutions and under ethical laws—institutions and laws that actually secure right and welfare—does not need always to decide for himself what he should do, but does freely what is to be done to sustain and further freedom.⁵⁴

Hegel notes that the moral will objects to such an ethical disposition to be guided in one's practical activity by "what is done"—by one's *ethical* duty—and considers it a limitation on its freedom. In Hegel's view, however, this is only because the moral will wants to safeguard its abstract practical freedom to determine for itself what it is to do.

[Ethical] duty only limits the arbitrariness of subjectivity or runs against the indeterminate, against the abstract good, which subjectivity should hold fast. As if, for example, people were saying: we want to be free, but free as such, abstractly.⁵⁵

By conceiving of its freedom abstractly in this way as subjective self-determination, the moral will itself turns whatever is objective—including the existing laws and institutions of the state—into an ab-

⁵³ Hegel, *PR* §§151, 268.

⁵⁴ See *ibid.*, §150.

⁵⁵ Hegel, *VR* 3:489–90; see *PR* §149 Add.

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abstract power over against the individual that is understood ultimately to limit or negate individual freedom. The ethical will, however, does not regard its freedom as solely and abstractly its own, and so does not consider itself to be confronted by abstractly objective or "alien" powers and authorities which dictate to it what it has to do. On the contrary, the ethical will understands its own freedom—including its own rights and welfare—to be secured by actual ethical laws and institutions and so feels itself to be "at home" in those institutions. Far from seeing in laws and institutions an implicit or explicit restriction on or threat to its freedom, therefore, the ethical will finds its own freedom realized in and through those laws and institutions. Ethical subjects find that "it is in the ethical realm that they *actually* possess *their own* essence and their *inner* universality."⁵⁶ As ethical subjects recognize that their own freedom is secured by laws and institutions, and that such laws and institutions are themselves actualized in the habits and practices of ethical agents, the difference between abstract subjectivity and the abstract essence, substance, or power of universality—a difference which defines morality—disappears.

For the ethical character . . . recognizes that its own dignity and the whole continued existence of its particular ends are based upon and actualized within this universal. Subjectivity is itself the absolute form and existent actuality of substance, and the difference between the subject on the one hand and substance as its object, end, and power on the other is the same as their difference in form, both of which differences have disappeared with equal immediacy.⁵⁷

With the ethical subject that understands its practical activity to be grounded in its theoretical understanding of what freedom actually is, the free will moves out of the sphere of abstract subjective freedom and thus at the same time out of the sphere in which the universal and objective character of freedom are regarded primarily as an "essential" or "substantial" power over individuals. In the ethical realm, the free will is released from the hegemony of abstraction

⁵⁶ Hegel, *PR* §§153, 147.

⁵⁷ *Ibid.*, §152. On the transition from morality to ethical life as the *Aufhebung* of abstraction, see Udo Rameil, "Sittliches Sein und Subjektivität. Zur Genese des Begriffs der Sittlichkeit in Hegels Rechtsphilosophie," *Hegel-Studien* 16 (1981): 134–6.

and the categories of essence, and is freed to a more rational perspective for which laws, institutions, and the state "cease to be an other for me," but are understood to actualize and secure my own freedom and to inform my own habits and practices. "And in my consciousness of this," Hegel says, "I am free."⁵⁸

There is room for abstract self-determination in Hegel's conception of freedom in the state (specifically in the system of needs in civil society).⁵⁹ However, it cannot be allowed to remain wholly abstract if freedom is to be more than the mere possibility of right and welfare, and individuals are not just to consider the state to be a "power" or public "authority" over them. As free beings, we enjoy the abstract freedom to produce through our own activity the means to satisfy our needs; we also enjoy the abstract freedom to choose for ourselves what kind of work we shall do.⁶⁰ However, our practical activity must also be informed by a deep regard for the rights and welfare of all, by a common sense of identity with other members of the corporation to which we belong and with other citizens of our state. This does not just mean that we sense that we ought to help others; it means that our practical activity must be habituated, by life in corporations and in the state, to being the actual pursuit of universal right and welfare.

The ethical will is the will that can and does make decisions by and for itself about what it is to do (for example, about choice of work). It is, however, a will that makes its decisions on the basis of its clear recognition of, and fundamental habitual disposition to promote, the laws, institutions, and human practices that actually secure right and welfare. For Hegel, it is this moment of theoretical insight into what actually secures the right and welfare of oneself and others that provides the objective guide to action, which the

⁵⁸ Hegel, *PR* §268.

⁵⁹ On the abstract character of freedom in the system of needs, see Lu de Vos, "Die Logik der Hegelschen Rechtsphilosophie: Eine Vermutung," *Hegel-Studien* 16 (1981): 111. On the importance of not simply excluding or suppressing abstract freedom, see Hegel, *VR* 4:112 where we read the following: "But this one-sidedness always contains an essential determination in itself. This freedom of the understanding is thus not to be dismissed." See also Hegel, *PR*, §5 Add; and Manfred Riedel, "Natur und Freiheit in Hegels Rechtsphilosophie," *Hegel-Studien Beiheft* 11 (1974): 374.

⁶⁰ Hegel, *PR*, §§206–7.

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moral will sought but was unable to find in the idea of doing duty for duty's sake, and which prevents the ethical will from having to resort to the arbitrariness of conscience to determine what is the right thing to do.

Unlike the moral will, therefore, the ethical will does not regard itself above all as "the determining and decisive factor,"⁶¹ but—even though it does decide some things about its life wholly by and for itself—is willing to allow its activity ultimately to be guided and informed by the laws, institutions, and habits that it knows actualize and secure freedom. In this sense, the ethical will is more like the speculative, philosophical mode of thought described in the Preface to the *Phenomenology*, which is prepared to "let [the content] move itself" (*sich bewegen zu lassen*) and to let itself be moved by that content, than the understanding which claims for itself the right to be "the arbitrarily moving principle of the content" and to judge for itself what is right and true.⁶²

It is interesting to note that even the monarch, who represents the pinnacle of the state and the supreme example of abstract arbitrary freedom in the state, is ethical in the sense just outlined in that in his decision making "he is bound by the concrete content of the advice he receives [and by the law]; and if the constitution is firmly established, he often has nothing more to do than sign his name."⁶³

I wish to stress again that even though the ethical will is defined as ethical by its theoretical understanding of what freedom actually is, and by allowing its activity to be guided by this understanding, this will is also a practical will that produces new needs, new means of production, and new social arrangements through its own activity; ethical life consists, after all, in the will, action, and labor of individuals.⁶⁴ However, the ethical will realizes that, as ethical, its activity is also re-producing, sustaining, and giving life to the existing laws and institutions which already actually secure freedom. It also recognizes that in so far as its activity is informed by the laws and institutions

⁶¹ Hegel, *PR*, §136.

⁶² G. W. F. Hegel, *Phänomenologie des Geistes* (hereafter, "*Phen*") ed. Eva Moldenhauer and Karl M. Michel (Frankfurt am Main: Suhrkamp Verlag, 1970), [*Werke in zwanzig Bänden* 3], 56, 36.

⁶³ Hegel, *PR*, §279 Add; *VR*, 4:672, 674, 677.

⁶⁴ See Hegel, *PR*, §142.

in which it has been educated, its activity is not just its own. We are ourselves active in renewing and sustaining society, but as the free beings society has helped to make us.

What the free will produces through its own activity is thus not just what it has produced, but what has been produced by the social and historical actuality of freedom that constitutes ethical life and defines to a large degree who "we" are. The recognition that what we produce through our own activity is not just our own, but also belongs to society, history, and the nature of freedom, falls, Hegel says, "on the side of the theoretical."⁶⁵ It is our theoretical, not our practical, activity that takes us out of ourselves and educates us to the ways and needs of other free beings. Theoretical activity does this, of course, by taking us out of ourselves into the universality and actuality of our own freedom. That is to say, it takes us out of our abstract conception of ourselves as I, as the possibility of radical newness, into a concrete understanding of what it actually is to be free, what we, as free beings, actually are, namely beings with personal but also fundamentally social, communal, and historical identities and interests.

Practical activity purports to take us out of ourselves in the sense that—at least in so far as it is moral activity—it seeks to translate inner purposes and intentions into actuality. However, the acting, moral subject seeks to translate its own purposes and intentions into action and insists that it only be held responsible for what it had in mind when acting. Taken by itself, therefore, despite exposing itself to the contingencies of the world in which it seeks to act, moral practical activity seeks to remain within the sphere of its own *self*-determination. Theoretical understanding, on the other hand, reminds us that what we are is not simply our own to begin with, but an identity we share with our society and historical forbears; that is to say, that the I is not simply an I but a We.⁶⁶

Though some may regard theoretical activity as self-enclosed contemplation that refuses to go out of itself and act, Hegel sees in such activity the activity in which above all we go out of ourselves, both by disclosing and accepting what we are rather than what we

⁶⁵ Hegel, *VR*, 3:110.

⁶⁶ See Hegel, *Phen*, 145.

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think we ought to be or would like to be, and by disclosing that we share a universal, social identity with others that is ours and yet not just ours. In so far as the will is liberated from its abstract concern for itself and its own possibilities, to the actual universality of its freedom, and to action that does actually promote and further the rights and welfare of others and of oneself, Hegel believes that this liberation is "of theoretical nature" (*diese Befreiung ist theoretischer Natur*).⁶⁷ As Hegel shows in his analysis of the French Revolution, without being leavened in this way by a theoretical openness to what freedom is, the practical freedom of the abstract I by itself has ultimately little to bequeath the world but the abstract possibility of freedom—the abstract possibility that all too often finds its realization in the ultimate abstraction of death.⁶⁸

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⁶⁷ Hegel, *VR*, 4:108.

⁶⁸ See Hegel, *Phen*, 436.

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HEGEL ON SLAVERY AND DOMINATION

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DOES SLAVERY EXIST BY NATURE, as some throughout history have been taken to believe? Or is slavery merely conventional, sanctioned by the opinions and practices of diverse communities? Is it a punishment for sinfulness or proscribed by the natural law? Can one sell oneself into slavery as the result of a free exchange, or is slavery prohibited by virtue of the natural rights of the individual? Is slavery a necessary moment in the struggle of human beings to attain mutual recognition and respect? Or have modern institutions like the market economy and the state created new and potentially more ominous forms of oppression?

The answer is yes to all of the above—or at least so people have from time to time believed. The point that even a relatively brief survey suffices to show is that the problem of slavery is by no means exhausted by the treatment of chattel slavery which is the kind of slavery most Americans will readily identify and which the Thirteenth Amendment abolished. Chattel slavery is, to be sure, one but only one example of a problem that goes far deeper. To inquire into the grounds of slavery is in fact to examine the root causes of human domination, misery, and oppression.

Perhaps no thinker has given more sustained thought to the problem of slavery than has G. W. F. Hegel.¹ Indeed, Hegel's dialectic of lordship and bondage in the *Phenomenology of Mind* has been called by one historian "the most profound analysis of slavery

¹ Throughout this paper I cite both English and German editions of Hegel's works. The German edition is *Werke in Zwanzig Bänden*, ed. Eva Moldenhauer and Karl M. Michel (Frankfurt: Suhrkamp, 1971). Henceforth this will be cited as "*Werke*," with reference to volume and page number. All translations are from English editions except where I have indicated my own departures.

ever written.”² Like all important texts, Hegel’s lordship and bondage chapter has given rise to a wealth of commentary. The most influential of these commentaries by far has been Alexandre Kojève’s *Introduction à la lecture de Hegel*, which attempted to establish a direct philosophical link not only between Hegel and Marx but between Hegel and Heidegger.³ Kojève’s magisterial study had the great merit of elevating the problem of mastery and slavery to the central motif of the entire Hegelian *Phenomenology*. For Kojève and the host of interpreters who followed in his wake, Hegel’s treatment of master and slave became the ground of history; and the dialectic of labor the key to human emancipation. Moreover, Kojève’s insistence on the phenomenological realism of Hegel’s study led to an unequivocally “atheistic” interpretation of the dialectic.⁴

More recently, however, George A. Kelly, in an influential article, has depicted Kojève’s “social” or “anthropological” reading of Hegel as misleading and one-dimensional.⁵ While admitting that “every student of Hegel is deeply enriched by Kojève,” Kelly argues

² David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (Ithaca: Cornell University Press, 1975), 558.

³ Alexandre Kojève, *Introduction à la lecture de Hegel*, ed. Raymond Queneau (Paris: Gallimard, 1947); a partial English translation was prepared by James H. Nichols, Jr. under the title *Introduction to the Reading of Hegel*, ed. Allan Bloom (New York: Basic Books, 1968). Kojève’s influence on contemporary European thought has been the subject of a number of excellent studies; see Vincent Descombes, *Modern French Philosophy* (Cambridge: Cambridge University Press, 1983), 9–47; Michael Roth, *Knowing and History: Appropriations of Hegel in Twentieth Century France* (Ithaca: Cornell University Press, 1988); Stanley Rosen, *Hermeneutics and Politics* (New York: Oxford University Press, 1987), 87–107; Steven B. Smith, “Hegel and the Three Crises of Rationality,” *Social Research* 56 (1989): 943–73.

⁴ “But very few of his readers have understood that in the final analysis dialectic meant atheism. Since Hegel, atheism has never again risen to the metaphysical and ontological levels. In our times Heidegger is the first to undertake a complete atheistic philosophy. But he does not seem to have pushed it beyond the phenomenological anthropology of the first volume of *Sein und Zeit*”; Kojève, *Introduction to the Reading of Hegel*, p. 259, n. 41. Kojève concludes that this anthropology “adds, fundamentally, nothing new to the anthropology of the *Phenomenology*.” For Heidegger’s later reflections on Hegel’s anthropological method see his *Hegel’s Concept of Experience*, trans. Kenley R. Dove (New York: Harper and Row, 1970); see also Kenley R. Dove, “Hegel’s Phenomenological Method,” *Review of Metaphysics* 23 (1970): 615–41.

⁵ George A. Kelly, “Notes on Hegel’s ‘Lordship and Bondage,’” *Review of Metaphysics* 19 (1966): 780–802.

that Kojève's "unilaterally 'social' interpretation of the *Phenomenology*" has led him to ignore the profound psychological dimensions of the problem, as well as to import "anachronistic overtones of the Marxian class struggle" into the text.⁶ Slavery is as much a moral and psychological problem as it is a social and political one, something that takes place within one self-consciousness as well as between more than one of them. Slavery, he admits, is "a multidimensional problem—and a paradoxical one" which cannot be reduced to social categories alone. Thus while Kelly avers that "Kojève's original exegesis of Hegelian themes is a profound work for our times," it has the disadvantage that it "ignores the depth and passion of Hegel's Greek attachments," as well as "the complicated range of his struggle with the Kantian split vision."⁷

There is much in Kelly's splendid analysis with which I agree. What I propose here, however, is a third reading of the slavery motif in Hegel which attempts to reestablish neither the social nor the moral-psychological, but the theological, dimension of the problem. Unless we bear in mind the deeply theological structure of Hegel's categories, we will be unable to comprehend the full power of Marx's and Nietzsche's rebellion against it. Before considering further Hegel's analysis of this problem, two preliminary observations are worth keeping in mind.

First, in contrast to the dominant interpretation of this motif, I suggest that Hegel's views on slavery are less important as an anticipation of Marx than as a repudiation of Aristotle. Repudiating Aristotle's famous doctrine of "natural slavery" and his belief that every social order can be divided into rulers and ruled, Hegel maintains that we are beings who fundamentally desire to be recognized or respected by others. Hegel's conception of mastery and slavery as historical categories rather than permanent features of any social order is related to his philosophy of history as a process of *Bildung* or emancipation from servitude. A work like the *Phenomenology* is crucially misunderstood if one overlooks the fact that it is directed primarily against the Aristotelian teaching on natural slavery.

Second, in opposition to the reigning opinion—to be examined more fully below—that regards slave labor as containing the key to its own emancipation, Hegel maintains that not labor but

⁶ Kelly, "Notes on Hegel's 'Lordship and Bondage,'" 782.

⁷ Ibid., 801.

Christianity is the cause of the transition from slave-holding antiquity to modernity. Rather than a regressive phenomenon, Christianity is the bearer of a far reaching culture of egalitarianism that Hegel believed would ultimately abolish altogether the archaic categories of master and slave. This essay is in part an effort to re-establish the Christian or, more specifically, Protestant conception of liberty underlying Hegel's views on recognition and emancipation.

I

Hegel's account of slavery is unique in the annals of thought in its attempt to derive slavery neither from nature, nor providence, nor chance, but from the very structure of self-consciousness (*selbstbewusstsein*). The natural human condition for Hegel, as for Hobbes, is one of struggle, in which one self-conscious subject seeks to gain "recognition" from another.⁸ The ensuing "struggle for recognition" (*Kampf des Annerkennens*) is an attempt to account not only for the origins of consciousness but for the complex relationship of self and other. The central moment in this struggle is not, however, the fear of death, as with Hobbes, but rather the interest in recognition from others. Consider the following passage from the *Phenomenology*:

Self consciousness exists in itself and for itself, in that, and by the fact that it exists for another self-consciousness; that is to say, it is only by being acknowledged or "recognized" . . . Each is indeed certain of its own self, but not of the other, and hence its own certainty is still without truth. . . . The relation of both self-consciousnesses is in this way so constituted that they prove themselves and each other through a life-and-death struggle. They must enter into this struggle, for they must bring their certainty of themselves, the certainty of being for themselves, to the level of objective truth, and make this a fact both in the case of the other and in their own case as well.⁹

The struggle for recognition remains, as it were, the pivotal moment in the Hegelian philosophy of self-consciousness. On this

⁸ G. W. F. Hegel, *Encyclopedia of the Philosophical Sciences*, vol. 3, *Philosophy of Mind*, trans. William Wallace and A. V. Miller (Oxford: Clarendon Press, 1971), par. 432, pp. 172-3; *Werke*, vol. 10, pp. 221-2.

⁹ G. W. F. Hegel, *Phenomenology of Mind*, trans. J. B. Baillie (London: George Allen and Unwin, 1966), 229, 232-3; *Werke*, vol. 3, pp. 145, 148-9.

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account, the self is what it is primarily through its relation to other selves. It is, above all else, the desire to be recognized or esteemed by others that is the quintessentially human desire. Indeed, the desire for recognition is a desire unlike all other desires. It is a desire not for any particular thing but a desire for the approbation of others. Animals may desire physical pleasures but only humans can desire the desire of another.¹⁰ No dog desires the love, esteem, or respect of another dog. While for moralists like Rousseau it is precisely the concern with the opinion of others that contains the seeds of moral and political corruption, for Hegel this concern is the core of our humanity. We are so constituted that we cannot live, or at least live well, without the respect or esteem of others, if our desires are not recognized by them.¹¹

Hegel imagines the struggle taking place originally in a state of nature where each self-consciousness demands recognition from the other without having to grant it in turn. It is from this life and death struggle for recognition—not unlike what Hobbes described as a *bellum omnium contra omnes*, in which man's passions for honor and prestige are asserted over his fear of violent death—that the relation of master and slaves arises. This fear arises because in the course of the struggle one of the parties is unwilling to go all the way and risk his life for the sake of recognition, thereby submitting to the other, granting recognition without requiring it in return. In short, the vanquished subordinates his own desire for esteem to the even stronger desire for self-preservation. In the *Encyclopedia* version of this story Hegel writes the following:

But because life is as requisite as liberty to the solution, the fight ends in the first instance as a one-sided negation with inequality. While the one combatant prefers life, retains his single self-consciousness, but surrenders his claim for recognition, the other holds fast to his self-assertion and is recognized by the former as his superior. Thus arises the status of *master and slave*.¹²

¹⁰ Hegel, *Encyclopedia*, vol. 3, par. 426, pp. 167–8; *Werke*, vol. 10, pp. 215–16.

¹¹ “Universal self-consciousness is the affirmative awareness of self in another self . . . each has ‘real’ universality in the shape of reciprocity, so far as each knows itself recognized in the other freeman, and is aware of this insofar as it recognizes the other and knows him to be free”; Hegel, *Encyclopedia*, vol. 3, par. 436, p. 176; *Werke*, vol. 10, p. 226.

¹² Hegel, *Encyclopedia*, vol. 3, par. 433, p. 173; *Werke*, vol. 10, pp. 222–3.

Like Aristotle before him and Nietzsche later on, Hegel disputes the liberal account that says society is the result of a contract between persons who are already free, equal, and rational. For Hegel, civil association has its origins in the difference between the prideful and self-assertive few and the timid and fearful many. The desire for recognition is in the first instance a noble desire akin to the Aristotelian virtue of *megalopsychia*.¹³ Magnanimity, Aristotle writes, is the crown of the virtues which presupposes all the other virtues and enhances them. As its name implies, magnanimity is concerned with the "greatest things," those things being honor and dishonor. The magnanimous man is, then, the free superior individual who claims much and deserves much. Magnanimity is also a peculiarly aristocratic virtue presupposing not only great wealth but the leisure to use it well. Magnanimity or noble pride is thus correlated with the aristocracy, while fear of death is correlated with the lower classes. It is the virtue of a small minority which in turn presupposes a hierarchical society divided into superior and inferior classes or estates.¹⁴

Hegel's account of the resolution of the struggle of master and slave reads almost like a burlesque on Aristotle's account of slavery in the *Politics*.¹⁵ For Aristotle, we recall, slavery is justified because it is the political institution that corresponds most closely to the natural hierarchy or inequality between body and soul. Just as it is the function of the soul to rule the body, so is it the function of thoughtful men to rule thoughtless ones. If nature provides a model or paradigm for political institutions, then slavery has its origins in human nature itself. Just as the soul and body can work together to produce a healthy or well-functioning individual, so can master and slave work together to produce a household and a *polis*.¹⁶

¹³ *Nicomachean Ethics* 1123b26–1124a4; see also Cicero, *De Officiis* 1.20.

¹⁴ For a discussion of this see Steven B. Smith, "Goodness, Nobility, and Virtue in Aristotle's Political Science," *Polity* 19 (1986): 5–26, esp. 17–25.

¹⁵ *Politics* 1254a28–1255a2, 1255b4–15, 1327b27–29, 1328b37–1329a2, 1330a25–33.

¹⁶ Aristotle's analysis of slavery has given rise to a wealth of literature. For two recent studies see Nicholas D. Smith, "Aristotle's Theory of Natural Slavery," in *A Companion to Aristotle's Politics*, ed. David Keyt and Fred. D. Miller (Oxford: Basil Blackwell, 1991), 142–55; Abram N. Shulsky, "The 'Infrastructure' of Aristotle's *Politics*: Aristotle on Economics and Politics," in *Essay on the Foundations of Aristotelian Political Science*, ed. Carnes Lord (Berkeley: University of California Press, 1991), 74–111.

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Hegel turns the Aristotelian account on its head. The basis for slavery is the need of one self-conscious mind to be recognized by another. In the ensuing struggle the vanquished grants recognition to his lord by the very fact that he is forced to work in his service. The master's enjoyment is predicated upon his freedom from work. The recognition which the master now enjoys, however, is no longer accorded by an equal but by a degraded "tool" who is merely employed to serve his lord's material comforts.¹⁷ The master, ironically, finds himself in the same situation as Aristotle's magnanimous man, who desires honors and recognition above all else but finds them unworthy of him once they have been bestowed. The master is somehow greater than any mark of recognition he might receive. What's more, rather than having attained to a level of contemplative autonomy, the master comes to realize his dependence upon the slave. He may have believed himself a being *an sich*, but he is in fact a being *für sich*.

This change in self-consciousness on the part of the master finds a corresponding change on the part of the slave. Through labor (*Arbeit*) the once fearful slave learns to conquer his fear of death and in the process develops a sense of his own self-worth. Labor is no longer conceived here as the biblical curse of Adam but becomes the basis for historical progress and the movement of humanity toward a deeper level of self-awareness. Labor effects a double transformation: first of the natural world and then of the slave's own sense of self: "Thus precisely in labor where there seemed to be merely some outsider's mind and ideas involved, the bondsman becomes aware, through this re-discovery of himself by himself, of having and being a 'mind of his own'."¹⁸

It is often argued by Marxian interpreters that this passage shows Hegel's awareness of the role of labor in history. His discussion of the slave acquiring a "mind of his own" is the moment when the slave allegedly comes closest to anticipating a sense of working class consciousness. It is well-known that prior to the composition of the *Phenomenology* Hegel had been studying Adam Smith's *Wealth of Nations* and Sir James Steuart's *Principles of Political Economy*.¹⁹ Both of these works, it is argued, helped to

¹⁷ *Politics*, 1254b16-23.

¹⁸ Hegel, *Phenomenology of Mind*, 239; *Werke*, vol. 3, p. 154.

¹⁹ Hegel's relation to political economy has been extensively glossed

move Hegel away from an erstwhile classicism that favors nonproductive action to a modern perspective which emphasizes labor or *poiesis*.²⁰ Marx himself even notes the affinity between Hegel and political economy when he says that "Hegel's standpoint . . . conceives labor as the essence, the self-confirming essence of man."²¹

This line of commentary has been more or less accepted by subsequent interpreters who have taken the master and slave relation out of its context in ancient Greek culture and used it, in the words of Kelly, as a "regulative ideal . . . for clarifying the progress of human history."²² The danger with this view, as noted earlier, is that it sees Hegel only as a kind of proto-Marx. Kojève, the most profound of the *marxisant* interpreters, has made the master-slave relation and the dialectics of labor the set piece of his reading of Hegel. "Work," he writes,

is *Bildung*, in the double meaning of the word: on the one hand, it forms, transforms the World, humanizes it by making it more adapted to Man; on the other, it transforms, forms, educates man, it humanizes him by bringing him into greater conformity with the idea that he has of himself.²³

Virtually the same position is adopted by Georg Lukàcs in his commentary on this passage in *The Young Hegel*. Lukàcs maintains that in his early writings "Hegel had completely overlooked the presence of slavery in Greek civilization," while only in the *Phenomenology* do we find an emerging awareness of the role of class struggle in history.²⁴ Here for the first time we find expressed "the realization that the high-road of human development, the humanization of man, . . . can only be traversed through work."²⁵ He

by Paul Chamley, *Economie politique chez Steuart et Hegel* (Paris: Dalloz, 1963); Raymond Plant, *Hegel* (London: George Allen and Unwin, 1973), 57, 114; Georg Lukàcs, *The Young Hegel: Studies in the Relations between Dialectics and Economics*, trans. Rodney Livingstone (London: Merlin, 1975), 170-4, 328-9; Laurence Dickey, *Hegel: Religion, Economics, and the Politics of Spirit, 1770-1807* (Cambridge: Cambridge University Press, 1987), 192-9.

²⁰ Manfred Riedel, *Between Tradition and Revolution: The Hegelian Transformation of Political Philosophy*, trans. Walter Wright (Cambridge: Cambridge University Press, 1984), 133-7, 176-83.

²¹ Karl Marx, "Economic and Philosophic Manuscripts of 1844," in *Marx-Engels Reader*, ed. Robert Tucker (New York: Norton, 1978), 112.

²² Kelly, "Notes on Hegel's 'Lordship and Bondage,'" 802.

²³ Kojève, *Introduction to the Reading of Hegel*, 52.

²⁴ Lukàcs, *The Young Hegel*, 327.

²⁵ *Ibid.*

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concludes with the observation that "unalloyed enjoyment" consigns the master to "sterility" while labor "raises the consciousness of the servant above that of his master in the dialectics of world history."²⁶ Similar statements can be found in a host of other interpreters.²⁷

I would like to depart from these interpreters long enough to suggest that for all the wealth of commentary to the contrary, labor plays a relatively minor role in Hegel's account of the transformation of master and slave and the struggle for recognition. Labor may discipline the will of the slave, but this does not make him any less a slave; just as leisure may dissipate the strength of the master, but this does not make him any less a master. Far from abolishing slavery, the labor process merely ratifies and confirms it. Adapting an argument from Dieter Henrich, labor produces no dialectical development but rather generates an endless, repetitive cycle of domination and servitude.²⁸ If this is correct the whole Marx-inspired interpretation of Hegel as the heir of classical political economy may be in need of rethinking.

II

The abolition of slavery, then, is not the result of the "transformative" or "expressive" power of human labor but of the introduction of a wholly new principle in world history. That principle

²⁶ Lukács, *The Young Hegel*, 327.

²⁷ Consider some of the following: "Fear and service cannot by themselves raise the slave's self-consciousness to genuine independence; it is labor that transforms servitude into mastery"; Jean Hyppolite, *Genesis and Structure of Hegel's Phenomenology of Mind*, trans. Samuel Cherniak and John Heckman (Evanston: Northwestern University Press, 1974), 175-6. "Through work, the slave rises from the disintegrative to the productive and self-productive consequences of negativity. . . . In making things himself, the slave substantializes himself in the products of his labor"; Stanley Rosen, *G. W. F. Hegel: An Introduction to the Science of Wisdom* (New Haven: Yale University Press, 1974), 163. "Labor is . . . the vehicle that transforms this relationship. The laborer's action does not disappear when the products of his labor appear, but is preserved in them. . . . The objects of his labor are no longer dead things that shackle him to other men, but products of his work, and, as such, part and parcel of his own being"; Herbert Marcuse, *Reason and Revolution: Hegel and the Rise of Social Theory* (Boston: Beacon Press, 1960), 116-17.

²⁸ Dieter Henrich, *Hegel im Kontext* (Frankfurt: Suhrkamp, 1971), 95.

is Christianity. It is Christianity, according to Hegel, that for the first time introduces the idea of universal recognition. The archaic struggle for prestige culminated in a world rigidly divided into masters and slaves, superiors and inferiors; it knew nothing of the universal and fundamental equality of mankind as such. This was exclusively the contribution of Christianity to world history. Christianity introduced the idea of the "I" or the "free infinite personality" that is higher than and defeats the social categories of master and servant. Long before Nietzsche contemptuously described Christianity as "Platonism for 'the people'," ²⁹ Hegel saw in it a powerful movement towards egalitarianism and freedom.

Indeed, the same critics noted above who emphasize the creative and transformative power of labor systematically undervalue the contribution of Christianity to the abolition of slavery. Thus Kojève interprets Hegel's as a fundamentally "atheistic" and "anthropological" social theory because of its repudiation of the Platonic and Christian notions of "transcendence" and the beyond (*Jenseits*). ³⁰ Likewise, Lukàcs even more bluntly declared the theological interpretation of Hegel to be a "reactionary legend" fostered by the ideologues of Wilhelmine Germany. ³¹ Even those who have written more sympathetically have referred to Hegel as standing in the genre of "civil theology" concerned not so much with religious truths as with social peace and stability. ³² For all of these reasons it is difficult today to reestablish the view that for Hegel religion in general, but Christianity in particular, is the locus of a profound moral truth.

This truth, as noted above, is found in the conception of individual or subjective liberty. This truth entered the world initially with Christianity, was deepened by the Protestant Reformation, the French Revolution, and Kantian morality, and has received its most far-reaching institutional expression in the modern state with its constitutional guarantees of the public recognition of the right of personality. ³³ This idea of subjectivity and individual freedom made

²⁹ Friedrich Nietzsche, *Beyond Good and Evil*, trans. Walter Kaufmann (New York: Random House, 1966), 3.

³⁰ Kojève, *Introduction to the Reading of Hegel*, 100-49.

³¹ Lukàcs, *The Young Hegel*, 3-16.

³² Plant, *Hegel*, 32.

³³ This is treated at greater length in Steven B. Smith, *Hegel's Critique of Liberalism: Rights in Context* (Chicago: University of Chicago Press, 1989), 98-131.

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its appearance only "a millenium and a half" ago, when "the freedom of personality began through the spread of Christianity to blossom and gain recognition as a universal principle," although even now it is still confined to "a small part of the human race."³⁴ It is "the right of the subject's particularity" that remains "the pivot and center of the difference between antiquity and modern times."³⁵ This right has even become "the universal effective principle of a new form of civilization" among whose "primary shapes" are "love, romanticism, the quest for the eternal salvation of the individual," as well as "the principle of civil society" and "the constitution of the state."³⁶

Hegel in fact makes not just the infusion of liberty but also the disappearance of slavery into a litmus test for the difference between the ancient *polis* and the modern state. It was in the Greek world that the consciousness of freedom first arose, but this was still understood as freedom for a few. The *schönen Freiheit* of the Greeks, which Hegel certainly never underestimated, was nevertheless dependent upon slavery—a fact which rendered that liberty "an accidental, transient, and limited growth."³⁷ Note here that while Hegel recognizes the importance of slavery in the ancient world, he nowhere indicates that slave labor was responsible for the transition to modernity. He goes out of his way instead to indicate that it is "the *Christian* principle of . . . Freedom" that was the causal agent.³⁸ To be sure, the awareness of this freedom did not make slavery immediately disappear; much less did freedom come to predominate in the social and political spheres. It remained "a problem whose solution and application required a severe and lengthened process of *Bildung*."³⁹ Only in the "German nations" (*germanische Nations*) under the influence of Christianity did the principle of universal freedom begin to make inroads, where at last it was possible to

³⁴ G. W. F. Hegel, *Philosophy of Right*, trans. T. M. Knox (Oxford: Clarendon Press, 1967), par. 62, p. 51; *Werke*, vol. 7, p. 133.

³⁵ Hegel, *Philosophy of Right*, par. 124, p. 84; *Werke*, vol. 7, p. 233.

³⁶ *Ibid.*

³⁷ G. W. F. Hegel, *Philosophy of History*, trans. J. Sibree (New York: Dover, 1956), 18; *Werke*, vol. 12, p. 31.

³⁸ Hegel, *Philosophy of History*, 19 (emphasis added); *Werke*, vol. 12, p. 32.

³⁹ Hegel, *Philosophy of History*, 18; *Werke*, vol. 12, p. 31.

regard "the history of the world as none other than the progress of the consciousness of freedom."⁴⁰

The awareness of the principle that all human beings as such are entitled to freedom marks the decisive point of difference between ancient and modern times. Hegel especially takes to task Plato's *Republic* for denying the role of individual liberty in determining matters of family and career. In Plato's *Republic*, "The subjective end simply coincided with the state's will," whereas "in modern times . . . we make claims for private judgment, private willing, and private conscience."⁴¹ While in the "the states of classical antiquity, universality was present, but particularity had not then been released," it remains "the essence of the modern state" that "the universal be bound up with the complete freedom of its particular members and with private well-being."⁴² The Platonic *kallipolis* may have represented "the substance of ethical life in its ideal beauty and truth," but this was at the expense of doing violence to the principle of the free personality. Plato tried to exclude this principle by "setting up in opposition to it his purely substantial state" with its strict controls on property ownership, marriage, and the family. Thus for Plato, "Subjective freedom does not count, because people have their occupations assigned to them by the Guardians."⁴³ "But subjective freedom," Hegel concludes, "which must be respected, demands that individuals should have free choice in this matter."⁴⁴

It is, then, the presence of the "I will" that is the minimum necessary condition for the emergence of the rights of personality. Hegel uses this presence which accompanies all our actions as the foundation of modern freedom:

Even in the beautiful democracy of Athens . . . we cannot help noticing that the Greeks derived their final decisions from the observation of quite external phenomena such as oracles, the entrails of sacrificial animals, and the flight of birds. . . . At that time, self-consciousness had not yet advanced to the abstraction of subjectivity, not even so far as to understand that, when a decision is made, an "I will" must be pronounced by man himself. This "I will" constitutes the great

⁴⁰ Hegel, *Philosophy of History*, 18, 19; "Die Weltgeschichte ist der Fortschritt im Bewusstsein der Freiheit"; *Werke*, vol. 12, p. 32.

⁴¹ Hegel, *Philosophy of Right*, par. 261A, p. 280; *Werke*, vol. 7, p. 410.

⁴² Hegel, *Philosophy of Right*, par. 260A, p. 280; *Werke*, vol. 7, p. 407.

⁴³ Hegel, *Philosophy of Right*, par. 262A, p. 280; *Werke*, vol. 7, p. 410.

⁴⁴ *Ibid.*

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difference between the ancient world and the modern, and in the great edifice of the state it must therefore have its appropriate objective existence.⁴⁵

To be sure, the Christian idea of personality and will had an important precursor in Socrates, whom Hegel calls “the inventor of *Moralität*.”⁴⁶ Prior to Socrates, the Greeks had a purely “customary morality” wherein family and *polis* were bound together in “a concrete unity of spirit.” It was Socrates and the Sophists of the fifth century B.C. who taught that not custom but the individual moral agent “who has the consciousness of what he is doing” is the true arbiter of right and justice. Socrates’ discovery of the subjective or reflective side of morality which submits existing laws and institutions to the bar of one’s own critical rationality thus manifested itself as a “revolutionary” moment within the Athenian ethical order of his day. It is precisely the emancipation of thought from customary restraints that brought about the “corruption” of Greek ethical life (*Sittlichkeit*), but also made space for the free individual as such.⁴⁷ Thus did Socrates, who “posited the individual as capable of a final moral decision,” succeed in making himself into a demigod “in the Greek sense.”⁴⁸

Yet at the same time that the new principle of moral personality came as a liberation from the yoke of custom, it also contained, Hegel sees, a “deeply tragical character,” which for the first time set the individual at odds with his country. This tragedy consisted in the conflict or collision between two equally valid sets of rights: those of the individual and those of the community.⁴⁹ Thus while Socrates may have urged his followers in the *Crito* to continue to perform their public duties as citizens, it became clear that it was not “the actual state and its religion” that was their home, but “the world of thought.” The habit of critical thought for which the Athenians had accused Socrates had taken root among themselves. The fragile unity which held the archaic *polis* together was now torn irrevocably asunder. The trial and execution of Socrates came too late to restore harmony. The “higher principle” of self-reflection

⁴⁵ Hegel, *Philosophy of Right*, par. 279A, p. 288; *Werke*, vol. 7, p. 449.

⁴⁶ Hegel, *Philosophy of History*, 269; *Werke*, vol. 12, pp. 328–9.

⁴⁷ Hegel, *Philosophy of History*, 267; *Werke*, vol. 12, p. 326.

⁴⁸ Hegel, *Philosophy of History*, 269–70; *Werke*, vol. 12, p. 329.

⁴⁹ Hegel, *Encyclopedia*, vol. 3, par. 508, p. 251; *Werke*, vol. 10, p. 315.

which Socrates had announced to his jury in the *Apology* had already "proved the ruin of the Athenian state."⁵⁰

It is important to remember that for Hegel the idea of individual personality, of this "I will," only entered the world with the advent of Christianity. Even today, Hegel freely admits, the respect for the autonomy of personality is far from universal. The idea is regularly attacked as "indefinite, ambiguous, and open to the greatest misconceptions" which have been of "tremendous consequence in practice."⁵¹ It is due to Christianity that we have acquired the belief that freedom is "the very essence of mind . . . [and] its very actuality":

Whole continents, Africa and the East have never had this Idea, and are without it still. The Greeks and Romans, Plato and Aristotle, even the Stoics, did not have it. On the contrary, they saw that it is only by birth, . . . or by strength of character, education or philosophy . . . that the human being is actually free. It was through Christianity that this Idea came into the world. According to Christianity, the individual *as such* has an infinite value as the object and aim of divine love, destined as mind to live in absolute relationship with God himself, and have God's mind dwelling in him: i.e. man is implicitly destined to supreme freedom.⁵²

Hegel makes it supremely clear that it is only through Christianity that slavery has been surpassed and rendered a thing of the past. The very idea that the human personality is of "infinite value" and an object of "divine love" is absolutely inimical to slavery. Obviously the full weight of this thesis was neither known nor accepted overnight; for this to be accomplished wars had to be fought, battles won, and blood shed. Nevertheless, the central proposition of Christianity is "an ever present sense that men are not and cannot be slaves."⁵³ The very idea that a person's life or property rests on the "arbitrary will" of another represents an "outrage" which can no longer be tolerated. Indeed, the claim that the individual be recognized as a person rather than a thing is no longer a mere "impulse" (*Trieb*) but a rational demand of "uncontrollable strength."⁵⁴

⁵⁰ Hegel, *Philosophy of History*, 270; *Werke*, vol. 12, pp. 329-30.

⁵¹ Hegel, *Encyclopedia*, vol. 3, par. 482, p. 239; *Werke*, vol. 10, p. 301.

⁵² Hegel, *Encyclopedia*, vol. 3, par. 482, pp. 239-40; *Werke*, vol. 10, pp. 301-2.

⁵³ Hegel, *Encyclopedia*, vol. 3, par. 482, p. 240; *Werke*, vol. 10, p. 302.

⁵⁴ *Ibid.*

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The result of this demand for universal, equal recognition is that slavery has been rendered anachronistic. Slavery belongs wholly to the ancient world, where its existence even there was only "relatively justified." Just as John Stuart Mill remarked that "despotism is a legitimate mode of government in dealing with barbarians,"⁵⁵ so does Hegel treat slavery as a necessary stage in the development of freedom. "To become free," he remarks, "to acquire the capacity for self-control, all nations must therefore undergo the severe discipline of subjection to a master."⁵⁶ The examples he uses are the tyranny of Pisistratus at Athens, and the period of kingship in early Rome which made possible "that admirable Roman virtue of patriotism." Under such circumstances both slavery and tyranny are "relatively justified" (*beziehungsweise Berechtigtes*), while for those who remain slaves, lacking the courage to fight for freedom, "no absolute injustice is done."⁵⁷

The idea that slavery is a necessary stage in historical development is vividly illustrated by Hegel's treatment of African slavery in the *Philosophy of History*.⁵⁸ Lacking any conception of justice or right, Hegel tells us, the African evinces "a complete contempt for man" and hence a "lack of respect for life" itself. Accordingly, "slavery is the basic legal relationship in Africa," where the distinction between master and slave is "endemic and accepted as natural."⁵⁹ It follows for Hegel that in a culture where human life has

⁵⁵ John Stuart Mill, *On Liberty* (New York: W. W. Norton, 1975), 11.

⁵⁶ Hegel, *Encyclopedia*, vol. 3, par. 435, p. 175; *Werke*, vol. 10, p. 225.

⁵⁷ *Ibid.*

⁵⁸ G. W. F. Hegel, *Lectures on the Philosophy of World History: Introduction*, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1975), 173-90; *Werke*, vol. 12, pp. 120-9. Given the sensitive nature of the subject of Africa, it is surprising that it has evinced little attention. An exception is W. H. Walsh, who remarks that while "Hegel was no racist, . . . the picture he offers of Negro society in Africa is far from attractive"; W. H. Walsh, "Principle and Prejudice in Hegel's Philosophy of History," in *Hegel's Political Philosophy: Problems and Perspectives*, ed. Z. A. Pelczynski (Cambridge: Cambridge University Press, 1970), 192. Another exception is Shlomo Avineri, who limits himself to the more neutral observation that Hegel's remarks about black Africa "bear witness to his astonishingly wide range of reading"; Shlomo Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972), 223, n. 8. He later mentions that while Hegel had "a very low view of African culture," this was mitigated by a more optimistic assessment of the ability of American blacks to absorb European culture (p. 236, n. 48).

⁵⁹ Hegel, *World History*, 183; *Werke*, vol. 12, p. 125.

little or no value, the enslavement of Africans by Europeans is at least partially justified on the ground that it can educate the African to have "consciousness of his freedom." Even though slavery is "unjust in and for itself," the lesson to be drawn is not that slavery must be abolished here and now, but rather that a person "must first become mature before he can be free," and consequently that "it is more fitting and correct that slavery should be eliminated gradually than that it should be done away with all at once."⁶⁰

Hegel's treatment of slavery here is an instance of his more general method of treating a people's beliefs and attitudes as relative to the level of their social and political development. Even if it is the case that "rational states" no longer tolerate slavery, it still remains "an aspect of the process whereby humanity gradually attains a higher ethical existence and corresponding degree of culture [*Bildung*]."⁶¹ Although "it is now generally accepted that man, as a human being, is free," this crucial insight still requires "the substantial ethical life of a rational state" to give it force.⁶² The primary function of the state is to educate all to an appreciation of the dignity of man and the equal recognition of rights. As Hegel's remarks on the persistence of slavery in the new world appear to indicate, while Africans were brought to the Americas initially as a labor force, their "susceptibility" to European culture makes them ideal candidates for manumission.⁶³

Hegel's comparative method of approaching slavery was taken in part from Montesquieu, who put the problem of slavery, quite literally, at the center of his work.⁶⁴ In *De l'esprit des lois* he says that slavery is an "absolute evil useful neither to the master nor the slave."⁶⁵ Slavery, he avers, runs "contrary to the fundamental principle of all societies."⁶⁶ Yet even while Montesquieu denounces slavery as the greatest of evils, he says it can be justified when circumstances so dictate. In excessively hot climates where only

⁶⁰ Hegel, *World History*, 184; *Werke*, vol. 12, p. 129.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Hegel, *World History*, 165; *Werke*, vol. 12, p. 109.

⁶⁴ Montesquieu's treatment of slavery occurs in the fifteenth of thirty-one books of his *De l'esprit des lois*, ed. Robert Derathe, 2 vols. (Paris: Garnier, 1973).

⁶⁵ Montesquieu, *De l'esprit des lois*, bk. 15, chap. 1, p. 261. Translations from this work are my own.

⁶⁶ Ibid., chap. 2, p. 263.

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"the fear of chastisement" can induce men to work, "slavery," he remarks, "is more reconcilable to reason."⁶⁷ Slavery may be unnatural, but it is also unavoidable in those parts of the world—for example, Persia—which have never known "moderate government." Slavery, ordinarily the greatest evil in Montesquieu's political lexicon, may be justified if the circumstances warrant it.⁶⁸ Montesquieu proposes that "possibly there is no climate upon earth where the most laborious services might not with proper encouragement be performed by freemen," but he prefaces this hopeful remark with the observation, "I know not whether this article be dictated by my understanding or my heart."⁶⁹

Despite Hegel's statement that slavery may be "relatively justified," there can be little doubt that he regards its continuation as an anachronism fated to disappear with further advancements of *Geist*. If, like Montesquieu, he could sometimes suggest that slavery can be reconcilable to reason, he can also maintain that slavery is a false and comparatively primitive phenomenon that belongs either to the ancient world or, what amounts to the same thing, to primitive societies. Consider the following passage from the *Philosophy of Right*:

The position of the free will, with which right and the science of right begin, is already in advance of the false position at which man, as a natural entity and only the concept implicit, is for that reason capable of being enslaved. This false, and comparatively primitive phenomenon of slavery is one which befalls mind when mind is only at the level of self-consciousness. The dialectic of the concept and of the purely immediate consciousness of freedom brings about at that point the fight for recognition and the relationship of master and slave.⁷⁰

Even slavery, Hegel adds in a note, is a voluntary phenomenon, for

if a man is a slave, his own will is responsible for his slavery, just as it is its will which is responsible if a people is subjugated. Hence the wrong of slavery lies at the door not simply of enslavers and conquerers but of the slaves and conquered themselves.⁷¹

The above *Zusätz* might seem to be a classic example of blaming the victims for their own misery. Nevertheless, the force of this

⁶⁷ Montesquieu, *De l'esprit des lois*, bk. 15, chap. 7, p. 267.

⁶⁸ Ibid., chap. 11, pp. 270–1.

⁶⁹ Ibid., chap. 8, p. 268.

⁷⁰ Hegel, *Philosophy of Right*, par. 57, p. 48; *Werke*, vol. 7, pp. 123–4.

⁷¹ Hegel, *Philosophy of Right*, par. 57A., p. 239; *Werke*, vol. 7, p. 126.

passage will be lost if we fail to put it in the context of Hegel's secular theodicy, whose aim is nothing less than the worldly incarnation of the divine *logos*. For Hegel, this *logos* speaks with a Protestant inflection. The effectual truth of this *logos* is not a teaching of otherworldliness, but rather the "reconciliation" of the human and the divine, the kingdom of the man and the kingdom of God. The meaning of the Christian *logos* is not to be revealed in the beyond, but within or at the "end of history."⁷² The end of history, however, is not some kind of eschatological destruction of the world, but its consummation or fulfillment in time. This consummation takes place in Hegel's theory of the modern state or, more generally, in the modern, secular-Protestant world. "The history of the world," he says at the conclusion of his lectures on the *Philosophy of History*, "is the true Theodicy, the justification of God in history."⁷³

The meaning of this consummation of the *logos* is made clear in paragraph 552 of the *Encyclopedia*. Here Hegel describes at length the view that "religion is the very substance of the moral life of the state," and goes on to remark that it has been a "monstrous blunder" of modern times to regard these two spheres, the secular and religious, as separate, much less "mutually indifferent."⁷⁴ What distinguishes the modern bourgeois Christian state from, say, the Greek *polis* or the Catholic Middle Ages is that God is no longer conceived as other to or alien to the believer but as "the very substance or indwelling spirit of self-consciousness." Hegel goes on to draw the following political conclusions. The Catholic religion with its conception of the Lord of Hosts as an "external thing," and its hierarchical conception of the relation between laity and clergy, is adequate only to "governments which are bound up with institutions founded on bondage . . . i.e. with institutions that embody injustice and with a morally corrupt and barbaric state of society."⁷⁵

Like a host of social and political theorists after him, Hegel relates Christian freedom, especially the emancipation from both

⁷² See R. K. Maurer, *Hegel und das Ende der Geschichte* (Stuttgart: Kohlhammer, 1965); Rosen, *G. W. F. Hegel: An Introduction to the Science of Wisdom*, 43–6, 280–3; and Smith, *Hegel's Critique of Liberalism*, 217–31.

⁷³ Hegel, *Philosophy of History*, 457 (emphasis added); *Werke*, vol. 12, p. 540.

⁷⁴ Hegel, *Encyclopedia*, vol. 3, par. 552, p. 284; *Werke*, vol. 10, p. 356.

⁷⁵ Hegel, *Encyclopedia*, vol. 3, par. 552, pp. 284–5; *Werke*, vol. 10, pp. 357–8.

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spiritual and temporal slavery, with the institutions of modern society. The Protestant conception of individual liberty carries over into every dimension of family, civil society, and the state:

Instead of the vow of chastity, *marriage* now ranks as the ethical relation; and, therefore, as the highest on this side of humanity stands the family. Instead of the vow of poverty . . . is the precept of action to acquire goods through one's own intelligence and industry—of honesty in commercial dealing, and in the use of property—in short moral life in the socio-economic sphere. And instead of the vow of obedience, true religion sanctions obedience to the law and the legal arrangements of the state. Thus, and thus only, can law and morality exist.⁷⁶

He concludes his discussion with the statement that "the divine spirit must interpenetrate the entire secular life. . . . The moral life of the state and the religious spirituality of the state are thus reciprocal guarantees of strength."⁷⁷

III

Hegel's identification of the secular-Protestant world with the reality of freedom did not survive his own lifetime. Even before the ink was dry on the Preface to the *Philosophy of Right*, cracks began to appear in his monumental assimilation of reason and reality. Indeed, the post-Hegelian critique of Hegel was motivated by the belief that Hegelianism had not solved the problem of slavery but had merely deferred it. The so-called left and right wings of Hegelianism fell apart precisely over the degree to which they believed institutions like civil society and the state were either preconditions for or impediments to future emancipation.⁷⁸

According to the right Hegelians (and Hegel's liberal critics), the *Philosophy of Right* was nothing but a justification, in fact a sanctification, of reality as it stood in Hegel's own era. If, as Hegel

⁷⁶ Hegel, *Encyclopedia*, vol. 3, par. 552, p. 286; *Werke*, vol. 10, pp. 358–9.

⁷⁷ Hegel, *Encyclopedia*, vol. 3, par. 552, pp. 286, 291; *Werke*, vol. 10, pp. 359, 365.

⁷⁸ See Horst Stucke, *Philosophie der Tat* (Stuttgart: E. Klett, 1963); and Karl Lowith, *From Hegel to Nietzsche: The Revolution in Nineteenth Century Thought*, trans. David Green (New York: Doubleday, 1967), 63–134.

asserted in the Preface to the book, all philosophy is simply "its time apprehended in thought" (*ihre Zeit in Gedanken erfasst*),⁷⁹ then this must be true of Hegelian philosophy as well, which must shun any attempt to ascend from the is to the ought and must limit itself to the description of what appears. Freedom must be sought entirely within the existing institutions of the Prussian monarchy and the state bureaucracy as these stood circa 1821. For those on the left, however, the Hegelian *Rechtsstaat* was at best a necessary but not a sufficient condition of freedom. The famed identity of reason and reality was not for them a description of an existing state of affairs but one which was yet to be accomplished. Rationality was postulated as a goal to be achieved rather than a fait accompli. From here it was but a short step from theory to practice, from interpreting the world to changing it.⁸⁰

Now it is obvious that neither of these positions has any evident trumping power over the other. In their eagerness to turn Hegel into the theorist of the Restoration, the defenders on the right risked conflating *Wirklichkeit* with *Existenz*.⁸¹ *Wirklichkeit* is a technical term in Hegel's vocabulary which means not what merely happens to exist or any contingent state, but what is fully in accord with rationality. Not all historical reality is *wirklich*, but only what advances the cause of freedom. The critics on the left, however, ran the equally dangerous risk of turning reason into a kind of Kantian *sollen* divorced from existing institutions and practices. Reason must be located within the world, or as Hegel reminds us in paragraph 342 of the *Philosophy of Right*, "World history is the necessary development . . . of the moments of reason and so of the self-consciousness of freedom and of mind."⁸² The task of philosophy is to discover the immanent forms of rationality from within what exists and to seek to reconcile us to them.

⁷⁹ Hegel, *Philosophy of Right*, 11; *Werke*, vol. 7, p. 26.

⁸⁰ See Yirmiahu Yovel, "Hegel's Dictum that the Rational is Actual and the Actual is Rational," in *Konzepte der Dialektik*, ed. Werner Becker and Wilhelm Essler (Frankfurt: Klostermann, 1981), 111-27; and Emil Fackenheim, "On the Actuality of the Rational and the Rationality of the Actual," *Review of Metaphysics* 13 (1970): 690-8.

⁸¹ G. W. F. Hegel, *Encyclopedia of the Philosophical Sciences*, vol. 1, *Logic*, trans. William Wallace (Oxford: Clarendon Press, 1975), par. 6, p. 9; *Werke*, vol. 8, pp. 47-8.

⁸² Hegel, *Philosophy of Right*, par. 342, p. 216; *Werke*, vol. 7, p. 504.

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The left Hegelian critique of slavery grew out of Hegel's depiction of the universal competitiveness and acquisitiveness of *bürgerliche Gesellschaft* as a "system of needs" whose principle is individual self-interest.⁸³ In civil society individuals face one another as buyers and sellers of property who are free to pursue their own interests. Hegel here relates the socially emancipated individual with the emergence of "the burgher or bourgeois."⁸⁴ It is precisely the dominance of the bourgeois over the classical *citoyen* that characterizes civil society as "the achievement of the modern world."⁸⁵ At the same time, however, civil society, as "an association of members of self-subsistent individuals" brought together for the purpose of "attaining their particular and common interests,"⁸⁶ is unable to prevent the creation of a "rabble of paupers."⁸⁷ An "excess of wealth" on the one side is not great enough to check "excessive poverty" on the other. The "amassing of wealth" is coupled with "the subdivision and restriction of particular jobs," and with an inability "to feel and enjoy the broader freedoms and especially intellectual benefits of civil society."⁸⁸ Hegel describes the creation of an underclass which is not simply defined by material deprivation, but also by the lack of any "sense of right and wrong, of honesty, and the self-respect which makes a man insist on maintaining himself by his own work and effort."⁸⁹ In what is surely one of the greatest pieces of understatement found anywhere in the Hegelian corpus, he notes that the problem of poverty remains "one of the most disturbing problems which agitate modern society."⁹⁰

Marx's entire critique of political economy, and therewith his analysis of slavery, could well have developed out of an internal analysis of the paragraphs on civil society in the *Philosophy of Right*. The core of Marx's critique is that civil society is not an emancipatory institution but the creator of new forms of domination and servitude, which he characterizes by the term "alienation."⁹¹ Marx's attack

⁸³ Hegel, *Philosophy of Right*, par. 188, p. 126; *Werke*, vol. 7, p. 346.

⁸⁴ Hegel, *Philosophy of Right*, par. 190, p. 127; *Werke*, vol. 7, p. 348.

⁸⁵ Hegel, *Philosophy of Right*, par. 182A, p. 266; *Werke*, vol. 7, p. 339.

⁸⁶ Hegel, *Philosophy of Right*, par. 157, p. 110; *Werke*, vol. 7, p. 306.

⁸⁷ Hegel, *Philosophy of Right*, par. 244, p. 150; *Werke*, vol. 7, p. 389.

⁸⁸ Hegel, *Philosophy of Right*, par. 243, p. 150; *Werke*, vol. 7, p. 389.

⁸⁹ Hegel, *Philosophy of Right*, par. 244, p. 150; *Werke*, vol. 7, p. 389.

⁹⁰ Hegel, *Philosophy of Right*, par. 244A, p. 278; *Werke*, vol. 7, p. 390.

⁹¹ Karl Marx, "Economic and Philosophic Manuscripts," *Marx-Engels*

on the alienating functions of bourgeois society begins, as we have seen already, from the proposition that the essence of man is labor and that under modern conditions the laborer is forced to alienate, that is, sell that labor power for a wage. The instrumentalization of labor power, its degradation from an end to a means, along with the increasing division and particularization of tasks, all contribute to the spiritual and even physical deformation of humanity.⁹² To be sure, Marx praises civil society and Hegel, its greatest theoretician, for liberating men from the various ethical and political restraints put upon human activity in ancient and medieval times. This emancipation, however, has been only "partial" at best, with the result that the "materialism" and "egoism" of civil society have served to alienate men from their social and communal nature (*Gemeinwesen*).⁹³ What is needed, then, is a fully "human" or "social" emancipation to liberate men from the individual and collective antagonisms engendered by market relations.

In his later works Marx refers to this "partial" emancipation of the workers in a capitalist economy as "formal" or legal freedom. The worker is formally or legally free because he is the owner of his own labor power, or of what Locke referred to as "the labor of his body and the work of his hands."⁹⁴ Unlike the ancient slave or the medieval serf, the modern worker is free to come and go as he pleases, to change employers, to enter into contracts with whomever he chooses. Indeed, modern exchange relations are the very basis of the type of freedom which Marx castigates as "a very Eden of the innate rights of man" where "alone rule Freedom, Equality, Property, and Bentham."⁹⁵ "Equality and freedom," Marx explains in the *Grundrisse*, "are thus not only respected in exchange," but "the exchange of values is the productive, real basis of all equality

Reader, 70-81. See also Daniel Bell, "The Debate on Alienation," in *Revisionism*, ed. Leopold Labedz (New York: Praeger, 1962), 195-211.

⁹² Karl Marx, *Capital*, vol. 1 (London: Lawrence and Wishart, 1971), 359-68.

⁹³ Karl Marx, *Grundrisse: Foundations of the Critique of Political Economy*, trans. Martin Nicolaus (Harmondsworth: Penguin, 1973), 84, 496. See also Karl Marx, *Critique of Hegel's Philosophy of Right*, trans. Joseph O'Malley (Cambridge: Cambridge University Press, 1970), 79, 81; and Nancy L. Schwartz, "Distinction Between Public and Private Life: Marx on the *zoon politikon*," *Political Theory* 7 (1979): 253-6.

⁹⁴ John Locke, *Second Treatise of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1960), sec. 27, p. 329.

⁹⁵ Marx, *Capital*, 176.

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and freedom."⁹⁶ Unlike Aristotle, who asserted the primacy of the political, Marx makes civil liberty, and hence servitude, dependent upon the state of productive relationships. Much like Hegel, Marx even contrasts "the freedom and equality in the world of antiquity," which presupposed "direct forced labor" as its foundation, to the freedom that obtains in modernity, where "labor is neither forced" as in antiquity, nor takes place "with respect to a common higher unit (the guild)" as in the Middle Ages.⁹⁷

Yet even as Marx notes the positive features of modernity, his tendency is to belittle and even mock these as but sham advances which conceal fundamental inequalities of power and status. It is precisely the deceptive equality of the exchange relationship that hides the new and real forms of human dependence. Thus, in the market place "both sides confront each other as persons," and "formally their relation has the equality and freedom of exchange as such"; but in reality this freedom and equality is "a mere semblance, and a deceptive semblance" at that.⁹⁸ Even if the worker may feel himself to have "a wide field of choice, of arbitrary will, and hence of formal freedom," this choice and freedom is severely constrained by his dependence on capital as such. Hence while the Roman slave was held by "fetters," the modern laborer is bound by "invisible threads" such as "the *fiction juris* of contract."⁹⁹ The fact that the worker is free to sell his labor power to whomever will buy it gives rise to the ideological illusion that he is free; and in a phrase that Aristotle would have clearly understood, Marx describes the free laborer as a "wage slave."¹⁰⁰

If Marx developed one side of the critique of Hegel, it was left to Nietzsche to develop the other. Nietzsche was less concerned with the economic aspects of domination than he was with the political. For Nietzsche, it was Hegel's divinization of the state that created the most formidable obstacle to human freedom. The following passage from *The Gay Science* is only a case in point:

The decline of the faith in the Christian god, the triumph of scientific atheism, is a generally European event in which all races had their

⁹⁶ Marx, *Grundrisse*, 464.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Marx, *Capital*, 574.

¹⁰⁰ See Harvey C. Mansfield, Jr., "Marx on Aristotle: Freedom, Money, and Politics," *Review of Metaphysics* 34 (1980): 351-67.

share and for which all deserve credit and honor. Conversely, one might charge precisely the Germans . . . that they *delayed* this triumph of atheism most dangerously for the longest time. Hegel in particular was its delayer par excellence, with his grandiose attempt to persuade us of the divinity of existence, appealing as a last resort to our sixth sense, "the historical sense."¹⁰¹

Nietzsche's worries about the divinization of the state are not merely hyperbole. As even friendly interpreters of Hegel have had to note, Hegel is often his own worst enemy. There is in the first place the infamous statement that "the state is absolutely rational inasmuch as it is the actuality of the substantial will";¹⁰² and the state is "the march of God in the world."¹⁰³ There is further the statement that "as high as mind stands above nature, so high does the state stand over physical life," so that "man must therefore venerate the state as a secular deity."¹⁰⁴ Similar statements abound in the *Philosophy of History*, where we read that "only in the state does man have a rational existence," for the state is, properly speaking, the end for which its citizens are but "instruments."¹⁰⁵ Likewise, Hegel remarks that while individual greatness may develop in solitude, it is only through assimilating oneself to the ends of the state that one becomes great.¹⁰⁶

It is not difficult to show that such statements are often qualified, even in the same passages, to indicate a more balanced perspective. The point is that for Nietzsche the horrifying feature of the Hegelian state, which is to say the modern state as such, is not that it controls the monopoly of physical force but that it contains the means of moral and spiritual power. The modern state has become a new idol which has stepped into the void left by the death of God. According to Nietzsche's Zarathustra, *der Staat* is "the name of the coldest of all cold monsters," which, he says, paraphrasing the language of Hegel, roars, "On earth there is nothing greater than I: the ordering finger of God am I."¹⁰⁷ This new idolatry

¹⁰¹ Friedrich Nietzsche, *The Gay Science*, trans. Walter Kaufmann (New York: Random House, 1974), par. 358, pp. 306-7.

¹⁰² Hegel, *Philosophy of Right*, par. 258, p. 155; *Werke*, vol. 7, p. 399.

¹⁰³ Hegel, *Philosophy of Right*, par. 258A, p. 279; *Werke*, vol. 7, p. 403.

¹⁰⁴ Hegel, *Philosophy of Right*, par. 272A, p. 285; *Werke*, vol. 7, p. 434.

¹⁰⁵ Hegel, *World History*, 94-5; *Werke*, vol. 12, pp. 56-7.

¹⁰⁶ Hegel, *World History*, 96; *Werke*, vol. 12, p. 59.

¹⁰⁷ Friedrich Nietzsche, *Thus Spoke Zarathustra*, trans. Walter Kaufmann (Harmondsworth: Penguin, 1969), 1.11.

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of the state has in turn created a new class of bureaucratic masters who, unlike the older European ruling classes, administer the state according to the principles of utility and the greatest happiness for the greatest number.¹⁰⁸

Nietzsche's understanding of the origin of the state owes much to Hegel's analysis of the struggle between master and slave in the *Phenomenology*. But while Hegel uses this image to account for the development of self-consciousness, Nietzsche uses it to account for the transition from one form of morality to another.¹⁰⁹ In the *Genealogy of Morals* Nietzsche regards master morality as involving a struggle for pure prestige or recognition, whereas slave morality involves a preoccupation with concerns like security, defense, and the preservation of life itself. The morality of the slaves is an essentially reactive disposition which Nietzsche describes as a form of *ressentiment* or revenge.¹¹⁰ In a dazzling series of epigrams he traces this new moral outlook back to Socrates, or rather "Socratism," with its "plebian" attempt to impose order and form upon the Dionysian power of the passions.¹¹¹ The modern state is not "the actuality of concrete freedom" that it was for Hegel, but rather an escape from the freedom that belongs only to those unable or unwilling to withstand it.

Nietzsche builds upon Hegel even where he appears to depart most dramatically from him. Hegel, we recall, interprets Christianity as ending the archaic struggle between master and slave by its showing that the individual as such, the "I" alone, is worthy of respect or "recognition." Nietzsche turns this around by arguing that Christianity represents nothing more than the triumph of slave morality and the plebian spirit of revenge. In fact, all the "isms" and ideologies of the modern world—democracy, socialism, pacifism, humanitarianism, and so forth—are nothing but secularizations of Christian slave morality. Democracy, with its demand for

¹⁰⁸ Friedrich Nietzsche, *On the Genealogy of Morals*, trans. Walter Kaufmann (New York: Random House, 1969), 1.2, 1.10, 2.12; *Beyond Good and Evil*, trans. Walter Kaufmann (New York: Random House, 1966), secs. 201, 204, 206, 260.

¹⁰⁹ Nietzsche, *Genealogy of Morals*, 2.17-18.

¹¹⁰ Ibid., 1.10-13, 2.20, 3.15.

¹¹¹ Friedrich Nietzsche, *The Birth of Tragedy*, trans. Walter Kaufmann (New York: Random House, 1967), sec. 15; cf. Friedrich Nietzsche, *The Twilight of the Idols*, trans. R. J. Hollingdale (Harmondsworth: Penguin, 1979), secs. 1-12.

equal rights for all, is unthinkable except as a residue of an understanding of the Christian God for whom all souls are equally and infinitely valuable.¹¹² The result of this process of secularization has been, ironically, not the liberation of man as the thinkers of the Enlightenment believed, but, again, his enslavement to new forms of mass organization and control. "The democratic movement," Nietzsche writes in *Beyond Good and Evil*, "is not only a form of the decay of political organization but a form of the decay, namely the diminution, of man, making him mediocre and lowering his value."¹¹³

Hegel and Nietzsche differ not only with respect to the causes of slavery, but also over its fate. Hegel takes the abolition of slavery to be a central feature of modernity and a benchmark in his depiction of moral and historical progress. For Nietzsche, however, slavery, rather than being the exception, has become the norm in modern democracies. Thus he reviles democracy as "instinctively hostile to every other form of society except that of the autonomous herd";¹¹⁴ and in the same text he excoriates "this degeneration and diminution of man into the . . . dwarf animal of equal rights and claims."¹¹⁵ By removing all traditional forms of deference and authority between classes ("the pathos of distance"), the democratic state introduces "a new and sublime development of slavery."¹¹⁶ Democratic man is developing into the distinctively leaderless animal, one who "is prepared for slavery in the subtlest sense."¹¹⁷

What, exactly, is this new form of slavery? What is slavery in its "subtlest sense" and most "sublime" form? The highest form of slavery is summarized in Nietzsche's teaching on the "last man," which might not unreasonably be compared to Hegel's "burgher or bourgeois."¹¹⁸ Nietzsche's last men are not slaves because they live under the domination of another, but because they are unable to imagine themselves as being anything other than what they are. The *letzten mensch* is the final form of democratic man who lives

¹¹² Nietzsche, *Beyond Good and Evil*, sec. 202.

¹¹³ Ibid., sec. 203.

¹¹⁴ Ibid., sec. 202.

¹¹⁵ Ibid., sec. 203.

¹¹⁶ Friedrich Nietzsche, *The Will to Power*, trans. Walter Kaufmann (New York: Random House, 1967), sec. 954.

¹¹⁷ Nietzsche, *Beyond Good and Evil*, sec. 242.

¹¹⁸ Hegel, *Philosophy of Right*, par. 190, p. 127.

only for pleasure and whose idea of happiness is confined to material comforts. Such individuals are prized, above all, for their utility to society rather than for their capacity to challenge or threaten it; that is what makes them so contemptible in Nietzsche's eyes. Like Alexis de Tocqueville, who wrote about the coming of democracy with the impending sense of "religious dread" with which one would approach a mighty juggernaut,¹¹⁹ Nietzsche sees the "homogenizing of European man" as a "great process" that cannot be obstructed and perhaps should even be "hastened."¹²⁰

Nietzsche clearly believed that hastening the rule of the last men would simultaneously generate their antithesis, the superman or *Übermensch* who will put an end to the petty rivalries and national vanities of the old Europe.¹²¹ Nietzsche describes this superman not as the bearer of a Lincolnian new birth of freedom but as the herald of a planetary tyranny.¹²² Far from deploring this fact, he welcomed it. The harsh enslavement imposed by the supermen is the only way of destroying the nihilism latent within the Christian West and restoring to it some order of rank.¹²³ The advent of the superman will in turn inaugurate an era of "great politics" characterized by wars on a global scale to be followed by the emergence of a new aristocracy which will rule by its own self-imposed imperatives.¹²⁴ The task of Nietzsche's great politics of the future, then, is not to abolish slavery but to reconstitute it.

IV

What, then, is the legacy of Hegel's analysis of slavery? If his attempt to locate the problem within a historical theodicy can no

¹¹⁹ Alexis de Tocqueville, *Democracy in America*, trans. George Lawrence, ed. J. P. Mayer (New York: Doubleday, 1969), 12.

¹²⁰ Nietzsche, *The Will to Power*, sec. 898.

¹²¹ Friedrich Nietzsche, *Ecce Homo*, trans. Walter Kaufmann (New York: Random House, 1969), sec. 2.

¹²² Nietzsche, *Beyond Good and Evil*, sec. 242.

¹²³ Georg Lukács maintains precisely the opposite of the truth when he claims that "what Nietzsche provided here was a morality of the socially militant bourgeoisie and the middle-class intelligentsia of imperialism"; Lukács, *The Destruction of Reason*, trans. Peter Palmer (Atlantic Highlands, N.J.: Humanities Press, 1981), 353. It was rather the "militant bourgeoisie" and "middle-class intelligentsia" against whom Nietzsche wrote.

¹²⁴ Nietzsche, *The Will to Power*, sec. 960.

longer be maintained, his emphasis on mutual recognition and respect remains central to contemporary discussions of equality and anti-discrimination law.¹²⁵ If his idea that slavery is a necessary stage in the struggle for freedom would be contested, his insights into the psychology of domination and the interactive context of freedom remain very much alive. If few would today readily accept the theological basis of emancipation and freedom, Hegel's repudiation of natural hierarchy along with permanent characteristics of rulers and ruled remains a deep and enduring legacy of the modern sensibility. Moreover, if few would so wholeheartedly identify the modern state and the market economy with the reality of freedom, none should deny that politics must serve the end of educating citizens toward an increased appreciation of the rights of moral personality and the duties of moral responsibility. In fine, then, one could say of Hegel's analysis of slavery what Churchill said of democracy, namely, that it is the worst except for all the alternatives that have been tried.

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¹²⁵ For a recent attempt to use Hegel for these purposes see Andrew Koppelman, *The Foundations and Limits of the Anti-Discrimination Project* (New Haven: Yale University Press, forthcoming).

What is the Question for which Hegel's Theory of Recognition is the Answer?

Robert B. Pippin

I

The claim I propose to defend is that Hegel's 'theory of recognition' is intended as an answer to a specific question in his systematic philosophy. That question is the question of the nature and the very possibility of freedom.¹

This will be controversial for several reasons. First I want to treat his mature theory of ethical life or the ethical community (*Sittlichkeit*) (the theory published as the account of 'objective spirit' in the *Encyclopedias* and most familiarly in the lectures on the *Philosophy of Right*) as an extension of the original, or Jena-period theory of recognition, not its abandonment.² A widely accepted view has it that while Hegel was originally interested in accounting for the nature and authority of social institutions by appeal to a basic inter-subjective encounter and the 'realisation' of such inter-subjective links, he came later to abandon that view about inter-subjectivity, and believed instead that human social and political existence was best understood and legitimated as a manifestation of a grand metaphysical process, an Absolute Subject's manifestation of itself, or a Divine Mind's coming to self-consciousness.³ On this interpretation, what had been a competing modern theory about the nature of human sociality, a rival to Machiavellian and Hobbesian attempts to understand how and why persons forge the links of dependence and authority that they do and must, and so a rival account of an original dependence tied to the problem of recognition, status, esteem and solidarity, not fear, power and security, became instead a conservative, organic theory, with individuals mere accidents of 'the truly real' ethical substance manifesting itself in time and with no central role any more to inter-subjective experience. My claim will be that this interpretation is insufficiently attentive to the unusual foundations of the mature theory of ethical life, or to Hegel's theory of spirit (*Geist*), and so to the very unusual account of freedom that position justifies. Once the latter is in view, I want to show, it is much easier to see how the 'ethical life theory' is an account of successful recognition, or a mutuality based on a kind of rational acknowledgement.

Secondly the claim is controversial because defending that proposition will involve the claim that the theory of recognition is not primarily to be understood (as it often is in post-war Hegel scholarship) as a comprehensive transcendental theory about self-awareness, as if about the possibility of *any* self-relation (as if the contents of any such self-relation are and must be internalisations of ways of being-regarded by others), is not primarily a genetic theory about the formation

of ego or social identity, and is not directly a normative theory of institutions or social justice.⁴ It is true that one can say that, according to Hegel, a certain form of social relation (recognising and being-recognised) is a 'condition for the possibility of true individuality,' but all the work in that claim is being done by 'true' (or 'concrete') individuality (*Einzelheit*) and that theme in Hegel should not be confused with questions of pre-reflexive self-familiarity, self-knowledge, existential uniqueness, personal identity and so forth. A *true individual* is a *free* subject and recognition relations function in a complex way as conditions for that possibility.

If such an interpretation turns out to be plausible, then the main philosophical question at issue is a simple one: *why does Hegel think a subject cannot be free 'alone,'* (a question distinct from the practical question of the co-operative conditions for the successful exercise and protection of freedom), *especially why does he think that subjects cannot be free unless recognised by others in a certain way, and what is involved in such recognition?* Can't I be free whether or not anyone else notices, acknowledges me, assists me, expresses solidarity with me, etc.?

II

There is a great barrier to any economical discussion of this possible interpretation: we would first need an adequate account of Hegel's speculative notion of freedom. Since that involves his speculative logic, as well as his account of the Nature-Spirit relation, there would seem to be miles to go before the relation between the recognition theory and the theory of freedom could be addressed. There are, though, some very general peculiarities about Hegel's understanding of freedom that can be summarised, at least as points of orientation. We need to note four such peculiarities.

First, Hegel does not defend a voluntarist position on the nature of freedom. Although in many ways a Christian philosopher, on this issue his sympathies are all with pre-Christian (Aristotle) or non-Christian (Spinoza) philosophers. He does not understand being free to be an individual's possession of a causal power to initiate action by an act of will in some way independent of antecedent causal conditions.⁵ Instead, freedom is understood by Hegel to involve a certain sort of self-relation and a certain sort of relation to others; it is constituted by *being* in a certain self-regarding and a certain sort of mutually related *state*. Such states are active, involve deeds and practices, but are understood to be free by being undertaken in certain ways, not by having special causal conditions. (A standard formulation: 'Thus spirit is purely with itself and hence free. For freedom is this: to be with oneself in the other. . .' (Hegel 1970b, v. 8, §24A))

Although our modern intuitions about individual responsibility and blame seem inextricably linked with a 'could have done otherwise,' 'special causality' voluntarism, Hegel proposes a general desideratum for any theory of freedom that, according to him, this state or non-alienation theory better fulfills. If the

question concerns the conditions that must be satisfied such that my various deeds and projects could be, and could be experienced by me as being, my deeds and projects, as happening at all in some way because of me (*sponte sua*), then we are in some trouble if the only way to establish this link is under the condition that I can exempt myself from the great weight of prior dependencies and socialisation and nature and determine by an individual act of pure willing that some deed occur. (Or at least, I assume here for the sake or argument that it is highly implausible that there is such a 'liberty of indifference', to use Hume's term, and that it doesn't help much to say that this almost completely implausible picture of human agency is a 'practical assumption' we must nevertheless make or don't know how to avoid in holding others to account.) But how exactly to establish such a connection otherwise, how to link such deeds and projects with me such that they count as due to me or count as mine and are thereby instances of freedom is all not easy to see once one gives up this voluntarism and takes seriously the standard modern worries about compatibilism (worries that not a different form of freedom is being defended, but no freedom, or no link, just a causal connection between me and my conduct). The solution according to Hegel is supposed to lie in the form of this self-other relation, in recognition. Being *in* that relation, I will have thereby achieved the right relation to my own deeds, such that the general condition is satisfied. .

Secondly, although such a state can be said to have various incarnations and especially degrees, its ultimate and fullest expression involves a further condition unequivocally insisted on by Hegel, but often neglected in standard interpretations.⁶ This state is defined as a 'rational' self- and other-relation, and thereby, because rational or 'universal', counts as being free, the product of reason and not a matter of being pushed and pulled by contingent desires or external pressure, or of merely strategically responding to such pushes and pulls.⁷

The third point is a brief historical note. As we shall see shortly the direction of such claims points towards some position wherein the exercise of whatever legislative and executive capacities count as freedom are (a) not original, or not properties, in some matter of fact or metaphysical sense, of a kind of substance, but (b) results of and internalisations of social interactions and mutual commitments among subjects developed over time within a social community. The story of why Hegel believes this involves primarily his early appropriation of many themes developed in Fichte's 1796 *Grundlage des Naturrechts*. That long story has mainly to do with the root idea that I come to develop a different relation to *my own desires and interests* when not only physically hindered by that other in the satisfaction of my desires but 'challenged' or 'summoned' by an other who *rejects*, does not just stand in the way of, my implicit claims to a piece of the earth. That sort of challenge is said to turn my own relation to my deeds into a claim, not just an enactment of a desire; this is so because my own pursuit of my desires turns into, must now – in this social situation – be counted as, a demand on the other as well. It is, on my side also, a rejection of that other's entitlement and not just a hindrance. In Fichte this at least eventually leads to a state of mutually accepted coercion, a quasi-Hobbesean realisation that I

cannot make such a claim to secure use (i.e. cannot make such a normative *claim*, as it must be 'after' the challenge) without accepting its universal relevance in like circumstances for each, and this justifies mutual 'negative' restrictions on freedom in Fichte's account. As we shall see, Hegel's case goes far beyond the issue of rights protection and counts all normative claims as claims of, attempts at, mutuality of recognition, but his intuition follows Fichte's throughout: to wit that this can all look like a compromise with the existence of the will of others, and so like a partial subjection of my freedom to the will of others, but that it looks so only under the false assumption that there could be anything like an individually free will apart from that social challenge and response. Rather the latter is the original condition of free agency itself, a social relation without which my relation to my own deeds could not be conceived as free, and so a form of dependence in which independence is achieved, not compromised.

Fourth and finally, while Hegel is rejecting the notion of any causal or causal power account of freedom, we should not go too far in any 'objective' or social theory of freedom. There must of course still be a *relation* between my individual views of what I will or should do, my intentions and reasons, and the actual action. It is as obvious to Hegel as to anyone else that I can have various reflective attitudes towards what I should do, or about what the claims of others on me should lead me to do, and that I sometimes act accordingly or 'on' such views, and I sometimes do not act accordingly or 'on' them. But for Hegel this relation, however important and preserved in his theory, is not a causal, but an 'expressive' one. (The definition of an action (*Handlung*) is simply an 'expression of subjective will' (*Äusserungen des subjektiven Willens*).) Hegel's most frequent example of this 'translation' or expression relation is an artist and his art work. In some sense of course, the artist causes the statue to be made, but what makes it 'his' is that it expresses him and his artistic intentions adequately, and what makes the 'him' it does express 'really him' is what we are mainly looking for and that has something to do with reason and thereby with the establishment of some mutuality.⁸

Thus what is supposed to be able to 'connect' me as an individual facing a possible choice with the choice that actually resulted is, as in many other rationalist or reflective theories, some appeal to practical reason in the 'determination'. Under that condition, the deed can be said truly to express 'me,' what I resolve to be, but fulfilling that condition does not involve 'a reason' actually functioning as a cause (the causally effective condition without which the deed would not have occurred), nor does it involve a subject exercising a faculty, as if a neutral tool. As we have already seen, deeds can count as mine if they do express my intention, and they can so count when undertaken rationally, but this latter state is one that Hegel most often describes (within the context of objective spirit) *as being in* a social state of recognising and being recognised, a state itself essential in my relation to myself counting as a product of reason and so as 'free.' It's the last claim that is so hard to understand, and even if only dimly understood, so controversial.

III

Consider again that Hegel is proposing a 'state' theory of freedom ('being with self in another'). What sort of a state are we talking about?

It is of course first of all a state of *spirit* and the *Encyclopedia* definition of spirit gives us, in extremely compressed form, all we need in order to be able to see (eventually) how the theory of objective spirit counts *being recognised in a certain way* as essential to the *achievement of freedom*, to formulate again the thesis I am trying to defend.

The formal essence of spirit is therefore freedom, the absolute negativity of the Notion as self-identity. On account of this formal determination, spirit can abstract from all that is external and even from its own externality, its determinate being. It can bear the infinite pain of the negation of its individual immediacy, i.e. maintain itself affirmatively in this negativity and have identity as a being-for-self. This possibility is the abstract being-for-self of the universality within it. (Hegel 1970b, v.10, §382)

The state in question involves first a certain sort of negative relation to one's own 'individual immediacy,' a way of not merely responding to nature's dispensations and immediate impulses as determinants of action, even while this negative self-relation does not mean simply *not* being one's contingent biological self (as if really being another, immaterial substance). But it also involves an 'affirmative' self-identity, a positive determination and not merely the capacity not to act as so naturally inclined. This is achieved through, it is said, the 'universality' within spirit and this is the claim to reason we have already noted as a criterial factor in the realisation of freedom. As he notes in different ways on several occasions, 'reason constitutes the substantial nature of spirit, and is merely another expression for the truth or the idea which constitutes the essence of it.'⁹

As we shall see later, it is the question of *achieving* this 'universal' point of view that will lead us back to the recognition issue, or the issue of being treated as, and treating others as, reason-givers and reason-responders. This is so because Hegel treats the highest or ultimate satisfaction of the freedom condition noted above – being able to 'find' myself, identify with, my deeds – in very much a Kantian way. That is, Hegel argues as well that a practically rational determination recovers the content of such deeds as my own, and establishes the proper sort of independence even in the satisfactions of my interests. As with many other philosophers, so for Hegel: an action is simply the sort of event for which reasons can be asked, and the quality and character of such reasons determines the extent to which I have acted freely, rather than been determined.¹⁰ As in the Zusatz to §15 in the *Philosophy of Right*:

This thing which is mine is a particular content and is therefore incompatible with me; it is thus separate from me and is only potentially mine, just as I am only the potentiality of uniting with it . . . It is inherent in arbitrariness

that the content is not determined as mine by the nature of my will, but by contingency, thus I am a dependent on this content, and this is the contradiction which underlies arbitrariness . . . When I will what is rational, I act not as a particular individual, but in accordance with the notions of ethical life in general (*nach den Begriffen der Sittlichkeit*); in an ethical act I make not myself but the issue itself (*die Sache*) the determining factor (*geltend*). (Hegel 1970a, v.7, §15 Z)

As Hegel himself constantly insists, modern social forms, the authoritative considerations offered and accepted as justifications, have no legitimate standing if only affirmed by the 'heart' or 'positive authority' (or, one might add, as a matter of contingent mutual advantage), or if, as matter of social fact say, forms of nationalist or ethnic mutual recognition actually achieve a matter of fact, or a psychologically satisfying form of trust and solidarity; these forms must rather be 'justified to free thinking', the 'content' of modern life must be shown to have a 'rational form'; our various drives must be 'freed' from the 'form of their immediate natural determinacy' and must 'become the rational system of the will's determination', we must be 'educated' to see ourselves in terms of a 'self-determining universality', and will not as a 'particular', but must seek 'the rational high road'.¹¹ The 'destiny' of individuals is to lead a 'universal life'.¹² Leading such a life, acting in a rational form, is what is to count as freely leading a life, rather than responding to and managing contingently acquired drives and desires. And when Hegel tries to gloss what he means by having achieved such a rational form, he does not appeal to a kind of practical wisdom based on an experiential knowledge of human nature, to an instrumental rationality, to a formal criterion of universalisability, or to some knowledge of the rational structure of Cosmic Mind. What he says is: only a life 'in accordance with the notions of ethical life' will have achieved the 'negation' of nature and the 'self-determining universality' that Hegel counts as freedom. That reference to sociality is, I think, already an indication of the continuing role that the problem of recognition, of achieving a form of social reciprocity and genuine mutuality, continues to play in the mature theory.

Formulated this way, this spiritual peculiarity (freedom) can be said to have degrees of realisation (degrees of achieved distance and independence), a fact that will finally lead us to the negativity and 'affirmative universality' characteristic of social life or objective spirit, the realms wherein various ways of transforming (rather than sacrificing) the immediate manifestations of nature, various ways of establishing that negative relation, take place; the realms of family, work, law and politics. Something like the *degree* of 'distance' attained from the original natural imperatives, the range of self-constituted responsiveness in such taking up of possible attitudes, or the range *not* simply set or determined by the natural condition, represents the basis for the gradualist or developmental account presented by Hegel. Nature is 'overcome' (*überwunden*) and spirit is its overcoming of the immediacy of nature and thus, is 'not the result of nature, but in truth is its own result'.

Thus Hegel's position on spirit amounts to defending the claim that some natural organisms can come to hold themselves and others to a 'determination' of

action, a norm or claim, that, while not the expression of any immaterial capacity, cannot be explained as a directly natural or causal result. Habits, rituals, socialised emotional dispositions and so forth (what Hegel calls 'anthropology') are the first, 'low level' manifestations of such achievements; low-level because, on the one hand, subjects still take themselves as largely subject to nature's immediacy (and so are), even as they begin to understand themselves as so taking themselves and so as potentially self-determining, as so subject because (and in the normative sense of 'subject' only because) they so take themselves. Being spiritual beings is a historical achievement of certain animals; not the manifestation of an immaterial or divine substance. Said much more simply: The left-Hegelians were right.

IV

These are certainly radical and very strange claims. (Hegel often writes that *Geist* is 'a result of itself', and it is initially hard to understand how anything can be a result of itself). But it is at least clear that 'being free' is not being treated as an essential or really any sort of property or substantial causal capacity, but throughout all Hegel's *Encyclopedia* formulations, as an *achievement*; the collective achievement of a state, wherein instead of natural dispositions subjects have come to be able to constrain their conduct on the basis of and, especially, engage each other on the basis of, norms. (Throughout his formulations, the language of achievement, product, making and especially positing, is considerably more pronounced than any language of manifesting, organic growth, or the appearance of substance.)¹³ Given such an achievement, we can say that some sort of consideration about 'what ought to be done' can actually circulate. Reasons are offered and accepted as entitlements and justifications for actions, all with a collective, binding authority, all with varying historical degrees of independence from what is experienced as the natural realm of unavoidable immediate necessity (from norm-less, state of nature relations of power alone.)¹⁴

That is, such beings can collectively bind themselves over time to rules and principles and laws constraining, sanctioning and directing conduct, and they can train themselves, come to hold each other to such constraints and expected common goals, in a number of ways (education, aesthetic practices, religious rituals, sanctions). There is no super-naturalism or 'noumenalism' in such an account and it is completely non-dualist.¹⁵

This chain of topics has now reached a decisive point, the chain that identifies freedom as a kind of state, not a causal power, that state as the achievement of a certain sort of negation of, independence of, nature, and that possibility as a kind of rational self- and other-relation. This multiplication of philosophical commitments (vague and abstract as they are in this rapid summary) has now created the core problem in Hegel's account: the question of what will finally *count*, in this mediated, gradualist picture of collectively achieved 'independence,' as *genuine* independence and collective self-determination (and so finally as the self-identification we are

looking for), i.e., constraint by norms that are not indirectly or directly 'nature dependent'; and why they can be so counted.

It is so extraordinarily difficult to understand what Hegel means because, throughout the *Philosophy of Right*, given all the alternatives he has rejected, he appears to have been busily painting himself into a very narrow corner, with no room to answer such a question. Famously, against Kantians, Hegel has given up the hope that there is a single formal rule of practical rationality in itself simply definitive *a priori* of such self-determination and inherently motivating, a rule which tells us how to determine our actions so as to be 'one among many', and self-determining and autonomous, not bound to our natural dependencies. He thus gives up the Kantian version of the attempt to show how one could come to experience *one's own* concrete, individual freedom in acting 'as any rational agent at all', defined so formally.¹⁶ As we have already seen (from the Zusatz to §15, among many other passages), he also rejects any strategic or utilitarian conception of such a normative structure. *I* (or, in a way we shall address in moment, 'we') must determine the preferences and interests to be satisfied (the preferences can't do the 'determining' if I am to be free), and that means, if I am doing so rationally, that others, as also setting and pursuing ends, must be taken account of in any such internal reflection as equally entitled agents. And the question remains: how? It is clear enough that and why Hegel rejects a rational egoist or contractualist or legalistic model of such common (morally equal, each counting as only one among many) subjection to norms, and why he thinks the achievement of such mutual regard, such concrete real normative equality in interactions, is the achievement of true self-determination and so of the state of freedom. And it is thus clear that his ethical thought means to appeal at bottom to an inescapable, binding form of human dependence which when properly (or normatively) acknowledged becomes itself the means for the achievement of a collective form of independence. But this all does not yet present an answer to the question: What really *counts* as this general normative ideal – counting myself as and being counted as (recognising myself and being recognised as) one among many (especially such that I remain a distinct one, even while being counted as among many) – and under what conditions would such a normative ideal come to be experienced as binding, as criterial for my being able to express my agency, to be able finally to 'see and experience myself in my deeds and institutions'?

It is at this point that we should recall how radically anti-substantialist and historical Hegel's *Encyclopedia* position on freedom (and therewith agency) has turned out to be. It is essentially the radicality of Hegel's non-dualist and constructivist position on *Geist* that leads him to answer these questions in such non-Kantian, non-instrumentalist ways and to appeal to recognition relations in so decisive a way. In essence what Hegel is claiming is that 'being an agent' is not to be analysed in terms of properties and inherent capacities but as itself a kind of collective social construct, an achieved state. The notion rather functions a bit like 'being a speaker of a natural language'; where vocalisations count as speaking the language only within a language community that takes such vocalisations to commit the speaker to various proprieties and entitlements. Or, in a simpler

example, one 'is' a philosophy professor only by being taken to be one, only in conforming to the norms that establish such a role, which norms exist only as social artifacts. It may sound strange to suggest that something so important to us as being an agent could have the same artificial status, and it seems much more intuitive to think of 'rational agent' as falling into the class of 'featherless biped', or 'being a female', but that, I am claiming, is Hegel's position. The passages already quoted are, I think, remarkably clear: one is a free individual only as 'a result', an element of a collectively achieved mindedness; or in being taken to be one in a certain way. The notion functions as a normative constraint in Hegel's account of *Geist*, constructed and held to as a social norm; it is not a metaphysical or natural kind.

As readers of the Jena *Phenomenology* know, the problem in such a collective attempt at a 'self-liberation' from nature is the achievement of a coherent, authoritative form of mutuality in the reciprocal claims and influence on others inherent in any action. (In that work too, a resolution of that problem is supposed to involve a kind of appeal to reason, as in the transition from Chapter Four to Five.) In that account, as already noted, one can even be said to become the subject of one's natural desires, they can emerge as mine, only as a result of a challenge from an other to any entitlement to satisfaction. Again, being a free agent consists in being recognised as one, and one can be so recognised only if the other's recognition is freely given; and this effectively means only if I recognise the other as a free individual. This introduces a much longer story, never finally resolved at the level of ethical life in the *Phenomenology*, but the point here is more introductory. Once Hegel's anti-dualism about *Geist* and a radical anti-realism or constructivism about norms is conceded, and some version of Hegel's critique of a formalist answer is accepted, then there is just nothing left to 'counting as a norm' other than being taken to be one, effectively circulating as one in a society, acquiring the authority that is determinative for what happens, what trumps what, what cannot be publicly appealed to, etc.¹⁷ Without a possible Aristotelian appeal to the realization of natural capacities in order to establish when one is really acting in a practically rational way (realizing one's natural potential); and without an appeal to a formal criterion of genuinely rational self-determination, this turns out to be the only criterion left: one is an agent in being recognized as, responded to as, an agent; one can be so recognized if the justifying norms appealed to in the practice of treating each other as agents can actually *function* within that community as justifying, can be offered and accepted (recognized as) justifying.

Of course this can all sound far too historicist and constructivist and potentially relativist (perhaps even Nietzschean) to do justice to the historical Hegel (especially since what counts as 'successful justification' is itself also a norm, functioning as such only if recognised as such), so we need quickly to note that Hegel also has elaborate and controversial views on the conditions that must ultimately be satisfied before the *attempt* or *presumption* to act as an agent (= to appeal to others to *take* one as such an actor), can be *successful*. We can address each other on the basis of certain normative claims that can *fail to function* as such normative appeals, despite our assumptions. One acts freely when one acts on the

basis of a claim to entitlement (a norm), but such a claim can be contested and can fail. 'We can thereby, Hegel thinks, somehow reconstruct something like the inherent 'logic' of such attempts, partial resolutions, and successes. (In the developmental account presented in the *Phenomenology*, as well as in earlier Jena accounts, the role of *conflict*, and actual challenges to any putative claim of normative entitlement, play a central role in an argument for the constructed character of the norms that result from such challenges, and in a idealised story of the development of successive, more adequate resolutions of such challenges.)¹⁸

Again, as noted above, on the face of it that logic is simple enough – I can succeed in being taken to be an agent, in being recognised as acting on entitlements and permissions, only if I recognise the other as such, respond to the other on the basis of such equal claims to entitlement (otherwise I cannot recognise his recognition of me), or only if some mutuality of recognition is possible – but what constitutes such an achievement and why certain claimants to it (historically, e.g., the Greek polis, or the results of the French revolution; systematically: contract, or the moral point of view) must be regarded as failures to achieve it, are not at all easy to summarise.

Matters are so complicated because of Hegel's rejection of a Kantian 'deductive' model of any such derivation (or any formal model of such rationality, such as Rawlsian constructivism), and because of his insistence on a dialectical, or perhaps more modestly, developmental model. More specifically in this context, Hegel's theory of recognition has turned out to be a theory of practical rationality of a radically 'boot-strapping' (internally self-determining and internally self-justifying) sort, the result of which is supposed to be, partly, the affirmation of the social norms defended in the *Philosophy of Right*, to which I should briefly return in conclusion.

V

Prior to the account given of ethical life (*Sittlichkeit*), Hegel takes himself to have shown that, while being a free subject consists only in the 'realisation' (*Verwirklichung*) of that norm, or consists in the 'actuality' of recognising others as, and being recognised as, such a free subject, that cannot consist alone in mutual recognition as rights bearers, with equal entitlement to produce, acquire and exchange goods, nor (alone) in recognising and being recognised as having equal status as morally responsible subjects, entitled to mutual respect in the pursuit of their own welfare and to assessment in terms of individual intentions and responsibility.

This is so for a number of reasons, many having to do with the putative status of the 'universality' claimed for such a norm of mutuality. (Hegel bases so many of his claims in the *Philosophy of Right* on such a very abstract logical language (as opposed to a direct analysis of the nature of a free will, or a phenomenology of self-determination, or an account of societal failure and historical change) that one might well be skeptical about whether the considerations about mutuality and reciprocity discussed above are relevant to the mature theory of ethical life.)

And indeed in these cases, it is because the norm in question, considered together with its application conditions and the ways it can and cannot count as a reason for an agent, is only an abstraction from a particularity, a mere generalisation, or based on a very formal appeal to conscience, that reliance on the norm cannot properly transform and regulate particularity, as freedom demands. There is no resolution of the appeal to universality on the one hand and the claims of particularity on the other, and Abstract Right is realised as the vengeful settling of scores; morality as evil itself (the supreme priority of the particular in conscience), and so both as the return of, the generalised manifestation of, repressed particularity, rather than its sublated 'overcoming'.

I leave aside the issue of the cogency of these criticisms. However, Hegel is also gradually demonstrating just what factors must be considered in accounting for the constructed character of such norms, regarding them as attempts at the achievement of collective self-regulation, and so self-determination, not determinations by nature or insights into moral reality. If they *are* to count as so posited within such an attempt, the conditions, *aporiai* and dilemmas in terms of which any such appeal would be legislated must also be considered. Without such a broader appeal to ethical life as a whole, without understanding these norms as posited within and by an ethical community, the status of coming to recognise each other as rights-bearers and individually responsible moral individuals or moral equals in any sense will look opaque; there will be no solution to the moral motivation problem; and the norm itself will be dangerously unstable and multiply interpretable. This is because we '*are*' not simply rights-bearers or moral individuals; we acquire such status in being so recognised, and so no appeal to 'natural' rights or noumenal status gets us very far. Only in some conditions, given some self-understanding, prompted by certain forms of social life, would coming to recognise each other as rights bearers or moral individuals have some role to play in the ethical life of a people (the attempt to live a free life, understood as the liberation from nature through the realisation of a form of ethical mutuality or universality), and we need an account of those prior conditions and so an account of the particular sort of claim on us that such notions have within modernity.

But the idea of the 'priority' of *Sittlichkeit*, and this sort of general Hegelian response, still seems to many to bring us all the way back now to the conservative, substantialist metaphysics supposedly behind the *Philosophy of Right*, a prior context or whole within which all the constructing and positing I have been talking about, in order really to count as the realisations of reason, are mere epiphenomena, where subjects binding themselves to certain norms are only manifestations of absolute *Geist*'s necessary, unfolding self-relation in time.¹⁹ If certain norms are appropriate to (and can be described in an attenuated sense as self-legislated within) some 'prior ethical substantiality,' we might be back to a claim for pre-reflective, substantialist position, and to a social ethics, where fulfilling a function I could not help but adopt and subscribe to, amounts to living a justified and so free life.

However, although Hegel does not treat the institutions of *Sittlichkeit* as the products of some idealised rational construction, and treats them as prior to and

the basis of more legalistic and formally rationalistic institutions (which he certainly does not reject, even while qualifying), he does not abandon, when describing such ethical life, the normative, rational and recognitional character of such ethical institutions, nor detach their claim on us from the claims of reason.²⁰ (Confusing these two issues is quite common, I think, in accounts of Hegel; taking, that is, his denial of the possibility of any methodological form of rationalist constructivism to be *ipso facto* a case for an ethical substantialism, rather than an extension and alteration of such a constructivism, which is what, I am trying to claim, it is.)

For example, already in the Addition to §7 of the Introduction, where the ethical status of the family is first introduced as an aside, Hegel makes very clear what is at stake for him. The following passage is offered as a gloss on such *logical* notions as: The 'I as . . . primarily pure activity', 'the universal which is with itself' as well 'as other', and so the 'third moment', the 'I which is with itself in its limitation, in this other'.

But we already possess this freedom in the form of feeling [*Empfindung*], for example in friendship and love. Here we are not one-sidedly within ourselves, but willingly limit ourselves with reference to an other, even while knowing ourselves within this limitation as ourselves. In this determinacy, the human being should not feel determined; on the contrary he attains his self-awareness only by regarding the other as other. (Hegel 1970a, v.7, §7 Z)

Thus the family, for example, is an ethical (an ethically binding, normatively regulated) and not primarily a natural institution: not because of anything 'substantial' or intrinsic about the family, but only because of the sort of active recognition of the mutual dependencies it requires and the necessary role of such dependencies in the achievement of any independence. (Note the 'limit ourselves' and all the other active verbs.) The form of this recognition is not rational in the rule, formal, legal or strategic sense, but it is treated here as a subject's realisation of dependence without which a subject cannot be who he or she is, a qualification of one's own interests that is also an expansion and alteration of such interests, all of which forms the basis for the establishment of an ethical relation.

The same sort of account can be made out in the discussion of civil society, where again there is no appeal to ethical substantiality that is not glossed as an appeal to forms of dependence criterial for freedom and recognised as such, and binding only as recognised. As at §192,

Needs and means, as existing in reality, become a being for others (*ein Sein für andere*) by whose needs and work their satisfaction is mutually conditioned. That abstraction which becomes a quality of both needs and means also becomes a determination of the mutual relations between individuals. *This universality, as the quality of being recognized (Anerkanntsein), is the moment which makes isolated and abstract needs, means, and*

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modes of satisfaction into concrete, i.e. social ones. (Hegel 1970a, v.7, §192, my emphasis)

And even in his discussion of the state, long the focus of critics of Hegel who believe he was untrue to his earlier insights, the state is said, in a way that again raises all the elements of the interpretation just sketched, to be the 'actuality of concrete freedom', and such concrete freedom is said to consist in the fact that,

... personal individuality (*Einzelheit*) and its particular interests should reach their full development and the *recognition* (*Anerkennung*) of their right for itself (within the system of the family and civil society) and also that they should, on the one hand, pass over of their own accord into the interest of the universal, and on the other knowingly and willingly *recognize* (*anerkennen*) this universal interest even as their own substantial spirit, and actively pursue it as their ultimate end. (Hegel 1970a, v.7, §260, my emphasis.)

This represents at least the desideratum of Hegel's theory of freedom; it does not yet provide a defense of the details of such claims about the legitimacy of various modern institutions. That goal would be: to be able to show (i) that one could be a free subject only in being recognised as one; (ii) that what that would involve is being 'concretely' recognised as, really taken as, one among many, and (iii) that the 'concrete' or mediated nature of such recognition must mean in modern life being loved (or being able to be loved) as a person, a distinct, entitled individual, not as a clan, or tribe member, or as family chattel; being respected as a functioning, rights-bearing, individually and morally responsible, significant member of the rational system for the satisfaction of needs, and as a citizen whose 'estate' status and so concreteness is respected and represented in a *Rechtsstaat*. It is in *being recognised as such a free subject*, that one can then *be* one, can thereby come to regard one's own life as self-determined and so one's own.²¹

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NOTES

¹ I will throughout refer to Hegel's 'theory of recognition,' in the sense that we would today call it a theory. But Hegel's speculative position, and his claims about the radical

inter-dependence of conceptual content, make this separation of topics slightly misleading, if still basically harmless. See Siep 1979: 301. (Siep is also right that Hegel understood himself to have clarified and resolved the great logical problems caused by the sort of relational claim implicit in a radical theory of the constitutive function of recognition (wherein the relata themselves, or agents, are ultimately also relational) in his account of 'reflection' in particular and the 'logic of essence' in general.)

² Looking at matters this way will also make it possible to distinguish the Jena and post-Jena theories not as original, and then abandoned, theories of inter-subjectivity, but as components of one theory with different emphases; first between genetic versus structural conditions of freedom (something that corresponds to what appears to be Hegel's own understanding of the issue, as at the Remark to §57 in (Hegel 1970a, v.7), and secondly, between an initial stage of exploration, where the *desideratum* of mutual recognition is posed and explored, and the later discussions, where Hegel seems to have decided that forms of ethical life wherein we recognise each other *rationally*, where the terms of recognition are rationally grounded, satisfy the conditions for the achievement of free individuality and so provide the answer to the issues he was grappling with in his Jena period.

A relatively standard view of the stages of this development: (1) (a) the critique in the 1802 *Naturrecht* essay of the notion of 'individual' presumed by the natural right tradition in its 'empirical' (Hobbes, Locke) and 'formal' (Kant, Fichte) versions, with a necessarily prior form of sociality largely assumed rather than argued for, and (b) the treatment of sociality as 'natural' in the Aristotelian sense (the developmental issue here is treated more as the development of ethical and more self-conscious forms of sociality out of prior 'natural forms'), (c) a strong emphasis on the risk of life as a marker for the kind of independence constitutive of freedom, within a community as well, as in the notions of bravery and willingness to sacrifice, and (d) the more favourable treatment of property and trading relations than in the classical context; (2) the *System of Sittlichkeit*, written just thereafter in 1802, where the influence of Fichte and a profound disagreement with Hobbes led to an approach where *social conflict over recognition*, especially as an explanation of the meaning of crime, and as leading to attempted resolutions of social struggle understood in such recognitional terms, replaced a reliance on natural development in an account of a true ethical totality (where, according to Honneth, 'communicative interaction' can even be said to replace natural forms of sociality as the central element of *Geist*. cf. the argument in Chapter Two of Honneth 1996, and contrast 'Hegel's Criticism of Natural Law Theory,' in Riedel 1984: 76–194); then (3) the decisive turning point (according to Honneth 1996, Wildt 1982: 325 ff., and Siep 1974: 155 ff.) in the 1803/4 fragments of a philosophy of spirit, where we see the beginning of the mature theory, with *Geist* (and so sociality) now explicitly the 'other' of nature, and any putative 'development' of *Geist* to be explained by a *self-formative*, *self-educative*, 'non-natural' process.

³ Versions of such a claim can be found in Habermas 1973 and 1987, Theunissen 1982, Hösele 1987, Honneth 1996, *inter alia*. Williams 1997 also opposes the developmental or abandonment interpretation, but for reasons different than those presented here.

⁴ So that debates about the 'originality' or non-originality of self-conscious subjectivity, like those between Henrich and Habermas, for example, do not touch on the real desiderata of Hegel's theory, however important and interesting the issue itself may be. The confusion in such debates stems, I want to claim, from an imprecision about the desiderata of 'the theory of recognition' and without more precision, it is very hard to assess such debates. See Dews 1995 for a very valuable summary and analysis of the Henrich-Habermas debate and related issues.

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One brief example of the claim I am making: in one of Manfred Franks' attacks on what he calls this 'a priori inter-subjectivism,' he identifies *all* of the following as what such a 'theory,' supposedly, is trying to show is secondary or dependent on inter-subjectivity: *Subjekt*, *Ich-Perspektive*, *Selbstverständnis*, *Selbstbeziehung*, *Selbstbewusstsein*, *Person* (in the moral, Kantian sense) and *Das Selbst*, and *Ego*. If all of these dimensions of subjectivity are to be at issue at once, there is no reason to refute such an inter-subjectivity theory, since it couldn't possibly be claiming anything coherent. cf. Frank 1991. My thesis in this paper is that there is no justification for inferring from Hegel's thesis about the priority of like-mindedness in the realisation of freedom that he wishes to defend a reductionist claim about subjectivity. When we see *what* such sociality is supposed to be prior to, and why, the suspicion that he does should evaporate. See my criticisms of Frank in Pippin 1996.

⁵ Being free does not involve the possession of such a capacity and in fact, does not involve any special sort of causality at all. (cf. Wolff 1992 on the categorial problems in the nature-spirit relation according to Hegel.) See also Quante 1997 for a valuable discussion.

⁶ As in the influential neo-Aristotelian accounts of commentators like Ritter and Ilting, rightly dubbed 'Unterwerfungsphilosophie' by Marquard (1973: 37ff.). The counter movement, the attempt to show that Hegel was trying to extend and better support the notion of moral autonomy (as a kind of rationality) is due mainly to Dieter Henrich's articles, and has been extended in exemplary fashion by Wildt (1982: 28 ff.).

⁷ Admittedly, there is no compelling, *prima facie* reason why being in such a state, however valuable or wonderful it might be, should count as being *free*. Hegel must show that to be so, and tries to do so by trading on our sense that I have acted freely if I can 'identify' with my activities and projects, if they are and can be experienced by me, as being mine. See my discussion of this and the compatibilism issue in Pippin 1997a.

⁸ As Taylor has pointed out, on this expressive model, he might even discover something about his intention *in* acting to express it, or come to alter it in so acting; something not possible on the reasons-functioning-as-causes view. See Taylor 1985: 77–96, and compare again Quante 1997.

⁹ Hegel 1978: 89.

¹⁰ The issues of degrees of freedom is important to stress. In a general sense being able to act on a reason at all establishes the deed as free, at least in the general sense of 'not being unfree', and only a slightly greater degree of self-understanding and intentional attitude is necessary for individual moral responsibility to be imputed. The 'full' realization of freedom though involves the achievement of a 'genuinely universal point of view,' and that requires actually being taken to be such reasons within a society, actually to circulate as such.

¹¹ Hegel 1970a, v.7, §16; §20; §21; §15 Z.

¹² Hegel 1970a, v. 7, §258 A.

¹³ Some representative passages:

'Spirit is usually spoken of as subject, as doing something, and apart from what it does, as this motion, this process, as still something particular, its activity being more or less contingent ...'

And Hegel's contrary view is now clearly stated:

'... it is of the very nature of spirit to be this absolute liveliness (*Lebendigkeit*), this process, to proceed forth from naturality (*Natürlichkeit*), immediacy, to sublimate, to quit its naturality, and to come to itself, and to free itself, it being itself only as it comes to itself as such a product of itself; its actuality being merely that it has made itself into what it is.'

And even, finally: '... it is only as a result of itself that it is Geist.' (All in Hegel 1978: 6–7, my emphasis).

¹⁴ Thus views like Allen Wood's – 'Hegel's ethical thought thus turns out to represent a rather Aristotelian variety of ethical naturalism' (Wood 1990: 12) – are somewhat misleading, especially in the use of the 'naturalism' category and the invocation of 'essential tendencies in the existent.' (For the best brief summary of Hegel's great differences with the Aristotelian project, see the evidence compiled by Wolff 1992.) Wood is careful to distinguish Hegel's from standard teleological theories (although he still often refers to freedom as something like an essential end or purpose for human beings), to emphasise the role of Kant and Fichte in Hegel's account of freedom, and to construe this naturalism as 'historicised.' But the 'state' of freedom as described by Wood seems very often a kind of *knowledge* of the human essence or of ethical substantiality. See pp. 32, 51, 70, 83, 204. This (a) leaves it unclear what sort of knowledge this is (especially when expressed as a 'historicized universalism', a term that sends us straight back to all the dialectical puzzles Wood wants to ignore); (b) raises all the concerns Theunissen, Habermas, Höle, Honneth and others have raised about the 'abandonment' of Hegel's inter-subjectivity theory, and (c) raises ominous political questions about the role and authority of claims to knowledge or even Hegelian science inside a political culture. See my review of Wood's book, Pippin 1993, and my comments on the intellectualist approach to Hegel's theory of freedom in Pippin 1997a.

¹⁵ These sorts of claims make it very unlikely that the 'state' in question that Hegel wants to count as the achievement of freedom is any part of a romantic or organic holism. The emphasis on independence from nature and the rather extreme, paradoxical claims that human mentality or mindedness is *a result of itself*, a product of itself, that it has 'made itself what it is' do not seem to be leading in any such direction. Self-realisation cannot be the development of a natural potentiality if the development in question is described as the 'self-liberation' from nature, and there is no natural whole into which subjects are supposed to 'fit' in realising their natures. The language is not about the accidents of any substance, but a kind of collectively made, *geistig* or artificial substantiality in time, a kind of collective achievement that finally makes possible the 'negative' relation to one's own nature, nature itself, and others, that Hegel wants to count as freedom, or as true independence.

¹⁶ The former constitutes the 'formalism' objection to Kant; the latter the 'rigorism' objection and is especially relevant to modern discussions of the problem of internalism, as I have tried to show in Pippin 1997b.

¹⁷ Of course, first of all, in many social situations, there are conflicting norms and deep disagreements. But Hegel's position is that we should first focus on what normative commonality makes possible the social solidity within which there can be conflict at all, agreement about the terms of the conflict, and he then proposes an account of the ground and significance of the conflict. Secondly, the full story about what it is to be 'acting on reasons' is a very long one, and should not be confused with being able to state and defend my reasons, as if modern social life is a kind of debating society. See Brandom 1994, ch. 1, on 'regulism'.

¹⁸ cf. My discussion in Pippin 1989, ch. 7. This strategy continues to reveal the strong influence of Fichte and Fichte's notion of the role of '*Aufforderungen*' in the development of any free self-conscious subject.

¹⁹ This is basically Habermas' and also Theunissen's worry. It is not an unreasonable one; cf. Hegel's later remarks about 'ethical powers' (*die sittliche Mächte*) and the 'accidentality' of the lives of individuals (Hegel 1970a, v.7. §145), the use of the substantialist language in §145A, or the discussion of the 'self-will of the individual' 'vanishing' 'together with the private conscience that had claimed independence and had opposed itself to the ethical substance' at §152. cf. Ilting 1963/4.

²⁰ See also the references in the *Encyclopedia*, (Hegel 1970b), v.10, §430ff., §490, §497ff., §527, §547, and Siep 1979: 302.

²¹ A final marginal note. Critics sometimes write as if Hegel expects modern citizens to be German Spartans, constantly adopting as their deepest, personal ends the 'good of the whole.' But there is no 'good of the whole' in Hegel's account. Surprisingly, ethical life as Hegel describes it is quite a modern phenomenon, let us say; fairly formal, pretty thin ethical gruel (rather more like Michael Oakeshott's 'civic associations' than Plato's *Republic*). And this very limitedness is partly what insures that the 'infinite' value of diverse individuality is preserved, since Hegel draws very few conclusions about the content of such free individual lives from such premises. Indeed, part of his theory about individual freedom insures that we should not and cannot draw such substantive implications. That is, one should note and take very seriously the fact that there is no theory of substantive virtues in Hegel's ethics, no account of the states of character or dispositions all should aspire to in order to live a free or rational life. The decisive issue remains the forms of social relations and social dependence within which a certain sort of self-relation is possible. Indeed, that issue is so decisive that, on the other side of the map from those criticisms of Hegel which hold that the individual is swallowed up into some all-determining organic whole, many have also criticized Hegel for abandoning his earlier theory of community, where inter-subjective experiences of recognition and solidarity were paramount, and claimed that he adopted instead an abstract institutional model, where the primary relation among human beings was between the institution and the individual and not between individuals. There is something to this, but it might also be regarded as testimony to Hegel's modernism.

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HEGEL'S JUSTIFICATION OF PRIVATE PROPERTY

Alan Patten¹

I

Introduction

Hegel subscribes to one of the oldest and most common justifications of private property in the history of political thought: the view that there is an intrinsic connection between private property and freedom. 'The true position', he asserts, 'is that, from the point of view of freedom, property, as the first *existence* of freedom, is an essential end for itself'.² Because property gives 'existence' to freedom, it grounds a right (*Recht*) both in Hegel's technical sense of the term,³ and in the everyday sense that it imposes various duties and obligations, e.g. of non-interference, on others.⁴

¹ A very early version of this paper was read by Jerry Cohen and Michael Inwood and several later versions were read by Michael Rosen. I am grateful to all three for their helpful comments and criticisms.

² *PR*, § 45. Throughout this paper I have used the abbreviations listed below to cite Hegel's texts. An 'A' following a paragraph number indicates that the reference is to an Addition culled from Hegel's lectures and included in standard editions of Hegel's works. Where I cite the German text only, the translation is my own.

Enc, III *Hegel's Philosophy of Mind*, trans. William Wallace and A.V. Miller (Oxford, 1971).

Enz, III *Enzyklopädie der philosophischen Wissenschaften III, Werke*, 10.

LPWH *Lectures on the Philosophy of World History: Introduction*, trans. H.B. Nisbet (Cambridge, 1975).

PR *Elements of the Philosophy of Right*, trans. H.B. Nisbet (Cambridge, 1991).

VGP, I–III *Vorlesungen über die Geschichte der Philosophie, Werke*, 18–20.

VG *Vorlesungen über die Philosophie der Geschichte, Werke*, 12.

VRP, I–IV *Vorlesungen über Rechtsphilosophie*, Vols. I–IV, ed. Karl-Heinz Ilting (Stuttgart, 1974).

VRP, 17 *Die Philosophie des Rechts: Die Mitschriften Wannenmann (Heidelberg 1817–1818) und Homeyer (Berlin 1818–1819)*, ed. Karl-Heinz Ilting (Stuttgart, 1983).

VRP, 19 *Philosophie des Rechts: Die Vorlesung von 1819/1820*, ed. Dieter Henrich (Frankfurt, 1983).

Werke *Hegel: Werke: Theorie Werkausgabe* (20 vols., Frankfurt, 1970).

³ *PR*, § 29.

⁴ On the correlation between rights and duties, see *Enc*, III, § 486.

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That there is some sort of connection between freedom and private property is a thesis which has been interpreted and elaborated in a number of quite different ways by the defenders of private ownership. According to what is perhaps the simplest version of the thesis, private property expands the liberty of the individual property-holder by removing certain obstacles to the realization of his ends and/or by providing him with a medium in which to express himself and to pursue his conception of the good life. This view is essentially a *constitutive thesis* about the relationship between freedom and private property: it assumes that individual freedom is marked by the absence of interference, and the presence of options, and notes that a right to some piece of private property both prevents others from interfering in certain ways and gives one certain options that would not otherwise be available.⁵ A second view, which might be called the *social stability* thesis, holds that the institution of private property is instrumental to the maintenance of a liberty-protecting social system. This view is often supported by pointing to the ways in which the decentralization of power that is entailed by a system of private property acts as a check against tyranny.⁶

In this paper, however, I want to explore a third interpretation of the relationship between freedom and private property, which I believe finds its most philosophically interesting expression in Hegel's mature social philosophy. Hegel elaborates and defends what I shall call a *developmental thesis* about the connection between individual freedom and private property. According to this thesis, having at least a minimal amount of private property is essential to the development and maintenance of the capacities and self-understandings which make up free personality. Hegel insists that it is only in possession of property that I 'become an actual will'⁷ or 'give my will existence'.⁸ 'Property', he claims, 'is a possession which belongs to me as a certain person, and in which my person as such comes into existence, into reality'.⁹ 'The rational aspect of property', he adds, 'is to be found . . . in the superseding

⁵ For critical discussion of this kind of justification of private property, see G.A. Cohen 'Capitalism, Freedom and the Proletariat', in *The Idea of Freedom: Essays in Honour of Isaiah Berlin*, ed. Alan Ryan (Oxford, 1979), pp. 9–25, especially pp. 11–17, and John Christman, *The Myth of Property* (Oxford, 1994), Ch. 4.

⁶ For a defence of this view, see Milton Friedman, *Capitalism and Freedom* (Chicago, 1962). For a good discussion, see Alan Ryan, *Property* (Milton Keynes, 1987), pp. 3–4 and Ch. 3.

⁷ *PR*, § 45.

⁸ *Ibid.*, § 46A.

⁹ *VGP*, II, 126.

of mere subjectivity of personality. Not until he has property does the person exist as reason.¹⁰

My aim in this paper is to develop a philosophical interpretation of Hegel's developmental thesis. Such an interpretation needs to address at least three different kinds of issues. The first, which is the focus of Section II, concerns what Hegel means by 'personality' and whether it is something which we should be concerned to develop today. The second issue, which I examine in Section III, concerns why Hegel thinks that private property encourages the development of free personality. What is it about the relationship between an agent and his private property that causes him to develop and maintain the capacities and self-understandings that make up personality? The third, related problem concerns why, in Hegel's view, the development of personality would not be encouraged under alternative property regimes. Why, for instance, would *any* form of interaction with material objects not be sufficient for the development of the relevant capacities and self-understandings? Why is private property uniquely qualified to perform this task? Sections IV and V attempt to answer these questions.

The most recent attempt to resolve these problems in a philosophical way can be found in Jeremy Waldron's book *The Right to Private Property*.¹¹ Like the present paper, Waldron starts from the assumption that 'Hegel argues that individuals need private property in order to sustain and develop the abilities and self-conceptions definitive of their status as persons'.¹² Much of Waldron's chapter on Hegel is then devoted to explaining, in a generally sympathetic way, how Hegel seeks to defend this claim.

The central thrust of Waldron's interpretation is that a private property system, unlike other property arrangements, works to inculcate individuals with

¹⁰ *PR*, § 41A. For the claim that Hegel defends a subtle version of the social stability thesis, see Alan Ryan, *Property and Political Theory* (Oxford, 1984). Ryan's suggestion that 'Hegel is obsessed by getting rational man to feel an adequate loyalty to his own state' (*ibid.*, p. 141) seems to be what lies behind his assertion that 'the point of there being property rights is to be seen in a variety of ways in which people anchor themselves and their purposes in the world' (*ibid.*, p. 124). The main problem I see with Ryan's interesting interpretation is that it downplays the kinds of passages that I have just cited, in which Hegel emphasizes the role played by property in developing will and personality. A second problem with the social stability thesis as an interpretation of Hegel is that it cannot cope with Hegel's important claim that 'everyone ought to have property' (*PR*, § 49A). Even if it is true that a system of private property, unlike other property regimes, has beneficial consequences for the maintenance of the system of liberties, it hardly seems likely that private ownership only has such consequences when everyone has some property — a point which is acknowledged by Ryan (*Property and Political Theory*, p. 124).

¹¹ Jeremy Waldron, *The Right to Private Property* (Oxford, 1988), esp. Ch. 10.

¹² *Ibid.*, p. 353.

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the self-discipline required for them to be properly functioning persons.¹³ Waldron illustrates his interpretation with the example of a carpenter building a chair. Once the carpenter has done certain things to the wood there are certain other things that he cannot then go on to do. This means that he must learn to plan and to be stable and disciplined in his willing.¹⁴ The argument points to the need for private property, Waldron thinks, because if others were constantly intervening in the would-be carpenter's material interchange with the world then there would be no point in his engaging in discipline-inculcating long-term projects at all; others would just upset them.¹⁵

Waldron's interpretation is impressive in its attempt to put together a philosophically interesting justification of private property which draws on distinctively Hegelian themes such as the relationship between discipline and freedom. But I believe that the argument can be faulted both as an attempt to justify private ownership and as an interpretation of Hegel.

As an attempt to justify private property, it fails to appreciate that private property is neither sufficient nor necessary for the learning of self-discipline, nor even central to it. That it is not *sufficient* is demonstrated by familiar examples of wealthy property-holders who, far from developing the various capacities that Waldron associates with property, lead a thoroughly dissolute and undisciplined lifestyle. Waldron surely exaggerates when he says that the possession of property 'forces' an agent to impose consistency, coherence and stability on his projects.¹⁶ If anything, it is the condition of propertylessness that forces people to become resourceful, imaginative, forward-looking and so forth. At the same time, private property is not *necessary* because there are other ways of developing the abilities in question which do not involve working on objects over which one has exclusive access and control. Raising a child or fulfilling the duties of many jobs and professions encourage planning, self-discipline, consistency and so on, but do not obviously presuppose a system of private property.¹⁷ Presumably a central way in which we learn self-discipline is by being told that we cannot have something we want unless we do something

¹³ *Ibid.*, pp. 370–4.

¹⁴ *Ibid.*, p. 372.

¹⁵ *Ibid.*, pp. 373–4.

¹⁶ *Ibid.*, p. 373.

¹⁷ Hegel laments the fact that Plato denies private property to his Guardians (*PR*, § 46, *VGP*, II, pp. 125–6). But given the rigorous education that Plato subjects his Guardians to, it would be ludicrous of Hegel to deny that the Guardians have the capacities for planning and self-discipline.

unpleasant first (e.g. 'You can't have your pudding until you finish your peas!').¹⁸

The weakness of Waldron's account as an interpretation of Hegel lies in the way in which it sidelines two themes which are central in Hegel's own argument. The first is Hegel's emphasis on the idea that the person is an object to himself in his property.¹⁹ Waldron tries to capture this idea by suggesting that it is the fact that the material object (say, the chair) registers the effects of the person's actions that forces him to plan and to be disciplined. But the fact that it is my actions which bring about changes in the object is incidental to the need for me to be disciplined in my approach to the object. I would equally need to be disciplined if it were nature that acts on the object (e.g. I might need to act to prevent mould from spreading across my walls). Hegel's claim that I am an object to myself in my property thus plays no essential role in Waldron's reconstruction at all. The second important theme which is downplayed by Waldron's interpretation is that of mutual recognition.²⁰ As we shall see in Section V, this theme is less prominent in the published *Philosophy of Right* version of Hegel's argument than elsewhere, but it is important nevertheless and needs to be integrated into any satisfactory interpretation of Hegel's position.

In this paper I develop an alternative approach to Hegel's justification of private property, one which restores to a central place the two important themes that are marginalized by Waldron.²¹ Although I believe that the argument I end up attributing to Hegel is stronger than the one developed by Waldron, for reasons I suggest in the concluding section I am sceptical about whether it is an adequate defence of private ownership. For the most part, however, my aim throughout will be to make the most out of Hegel's argument and not to criticize it.

¹⁸ An important theme in Hegel's work is that we learn the self-discipline required for freedom through being subjected to the will of another. Although in some circumstances this subjection may take the form of a master-slave relationship (*Enc*, III, § 435A), Hegel holds that in modern European societies it occurs in the context of the family (*PR*, § 174A).

¹⁹ *PR*, § 45. I discuss this idea in Section III, below.

²⁰ Waldron argues that the need for recognition could be satisfied by *any* system of property, not just private property. See Waldron, *The Right to Private Property*, pp. 303–4, 375. I suggest why Hegel may have thought differently in Section V, below.

²¹ Two papers which are quite congenial to my position are Peter G. Stillman, 'Property, Freedom, and Individuality in Hegel's and Marx's Political Thought', in *NOMOS XXII: Property*, ed. J. Roland Pennock and John W. Chapman (New York, 1980), pp. 130–67, and Dudley Knowles, 'Hegel on Property and Personality', *Philosophical Quarterly*, Vol. 33, no. 130 (1983), pp. 45–62. Unlike these papers, but like Waldron's book, I shall focus here on how, and to what extent, the argument developed by Hegel constitutes a justification of *private* property rather than property arrangements more generally.

II

Personality

In all of the mature versions of Hegel's social philosophy, the main discussion of property can be found in the section entitled 'Abstract Right'. The central assumption of 'Abstract Right' is that the agents, or wills, who make up the social world are *persons* or possess *personality*.²² This assumption distinguishes the social world of abstract right from the worlds of morality and the ethical life, where agents are assumed not only to be persons but also subjects and members respectively; they possess not only personality, that is to say, but also subjectivity and substantiality.²³

'Abstract Right' has two main aims relating to its central assumption — one positive, the other negative. The positive one is to determine what basic institutions and practices the social world must contain, given the assumption that agents in that world are persons. Hegel's methodological assumption here is that, if we accept the value and importance of personality, then the argument he shall develop should give us good reasons to feel reconciled to the institutions and practices in question and to think that they are justified.²⁴ The second, negative aim of 'Abstract Right' is to show that a social world containing only persons and the institutions and practices grounded in personality would not be viable: unless agents possess subjectivity and substantiality in addition to personality, the social world they inhabit would be self-undermining (e.g. property rights would be regularly violated, contracts would not be observed, and punishment would take the form of revenge) and even the personality of agents would be at risk. It is the first aim which will concern us here, for central amongst the institutions which Hegel thinks necessary for personality is private property.

Three features of Hegel's conception of personality are worth remarking on, all of them emphasized in the opening paragraphs of 'Abstract Right'. The first point is that to be a person, or to possess personality, is to have a sense of independence from one's given situation and ends:

It is inherent in *personality* that, as *this* person, I am completely determined in all respects (in my inner arbitrary will, drive, and desire, as well as in relation to my immediate external existence [*Dasein*]), and that I am

²² *PR*, § 33A, § 35.

²³ *Ibid.*

²⁴ On Hegel's project as an attempt to *reconcile* modern Europeans to their social world see Michael Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge, 1994), esp. Ch. 3. Waldron, *The Right to Private Property*, pp. 344–7, contains a good defence of the claim that Hegel seeks to justify private property and not *merely* to understand it. See also Ryan's sensitive remarks in *Property and Political Theory*, pp. 139–40.

finite, yet totally pure self-reference, and thus know myself in my finitude as *infinite, universal, and free*.

Personality, Hegel adds,

begins only at that point where the subject has not merely a consciousness of itself in general as concrete and in some way determined, but a consciousness of itself as a completely abstract 'I' in which all concrete limitation and validity are negated and invalidated.²⁵

An agent can be said to be a person if and only if he (a) perceives that he has certain empirical features — e.g. certain wants, desires and so forth — *but also* (b) conceives of himself as independent of these empirical circumstances, in the sense that they do not dictate to him what he must be or do. Personality thus involves an understanding of oneself as an independent, self-determining agent and therefore a capacity to reflect on, and critically scrutinize, one's given situation and ends.

The second feature of Hegel's conception of personality worth noting is that it is not tied to the pursuit of any particular ends or goals, but is essentially open-ended:

The *particularity* of the will is indeed a moment within the entire consciousness of the will (see § 34), but it is not yet contained in the abstract personality as such. Thus, although it is present — as desire, need, drives, contingent preference, etc. — it is still different from personality, from the determination of freedom. — In formal right, therefore, it is not a question of particular interests, of my advantage or welfare, and just as little of the particular ground by which my will is determined, i.e. of my insight and intention.²⁶

Hegel does, as this passage suggests, have a more full-blown conception of freedom in which the content of one's ends becomes important, but this is different from free personality. The fully free will, in Hegel's view, is the will which, in deliberating about what to do, does not take any of its given wants or desires as authoritative, not even the system of all of its wants and desires, but rather attempts to determine its activity completely out of its own thought and reason.²⁷ To be free in this sense means only acting in certain ways; ultimately, it means adopting the duties and virtues of the various institutions of *Sittlichkeit*, including the state. This is not the case with free personality: being a person is consistent with acting in any particular way, so long as one preserves a sense of oneself as independent in so doing.

Many people shy away from full Hegelian freedom on the grounds that is too demanding. How could someone deliberate about what to do in *complete*

²⁵ *PR*, § 35.

²⁶ *Ibid.*, § 37.

²⁷ *Ibid.*, § 21.

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abstraction from his given wants and desires? The same objection cannot, however, be made against Hegel's conception of free personality. Personality implies a sense of distance between oneself and one's ends and life situation. It involves the ability to evaluate and reflect on one's ends that is central to our everyday idea of individual autonomy. Unlike full Hegelian freedom, it need not imply that we subject our ends or situation to critical examination 'all the way down', nor that there is some set of rational ends to be discovered once we embark on this course of radical reflection.

Thirdly, Hegel assumes that personality is a distinctively *human* capacity (it helps to distinguish human beings from animals), but not one which human beings necessarily have (in this sense, some human beings are *merely* animals).²⁸ Personality involves a set of capacities and self-understandings which are acquired only through *Bildung* — a process of education and acculturation achieved through one's social experience. In certain types of social worlds the individual is able to develop the capacities and self-understandings that are integral to personality; in other types he cannot.²⁹ The central claim of Hegel's account of property is that it is only in social worlds containing the institution of private property that an agent can become a person; it is only in such a world that he can 'become an actual will'.³⁰

III A Puzzle

This brings us to the central problem that I want to address in this paper. How, according to Hegel, does the institution of private property encourage the development of free personality? What is it about private ownership that causes the agent to develop the capacities and self-understandings that make up personality or to reinforce them once they have been initially developed? This section represents a first attempt to answer these questions. By examining some of Hegel's claims about property in the *Philosophy of Right* I shall try to reconstruct the rationale, as he saw it, of a private property system. We shall see that this reconstruction at best shows why private property is sufficient for the development of free personality; it does not show why private property is necessary and thus fails to constitute an adequate justification of that institution.

²⁸ *Ibid.*, § 35A.

²⁹ For instance, Hegel thinks that individual personality did not develop in Asian civilizations, and did so only to a limited extent in Ancient Greece. See *PR*, § 185; *VG*, pp. 152–3, 177, 306–9, 339; *VGP*, I, p. 372.

³⁰ Hegel backhandedly credits Plato with having perceived this connection between private property and the development of personality. According to Hegel, it is because Plato sought to forestall the emergence of free personality in his republic that he was careful to proscribe private ownership (for the Guardians). See *VGP*, II, pp. 125–6.

My conclusion, therefore, will be that there is a puzzle about how Hegel might attempt to complete his argument for private ownership. The remainder of the paper then tries to solve this puzzle.

Hegel's central assertion about property is made at Paragraph 45:

the circumstance that I, as free will, am an object [*gegenständlich*] to myself in what I possess and only become an actual will by this means constitutes the genuine and rightful element in possession [*Besitz*], the determination of *property* [*Eigenthum*].

This passage in fact makes two important claims which need to be unpacked. The first is the claim that, in property, I, as a free will, am an object to myself. In his 1817–18 lectures, Hegel expresses this point more directly when he says that 'I look at myself in my property' (*ich schaue mich in meinem Eigenthum an*)³¹ and that in property 'I regard myself as free'.³² The second claim is that it is this experience of being an object to myself that allows me to 'become an actual will'. It is through looking at myself in my property that I develop and reinforce the capacities and self-understandings that make up personality. I shall call these the *self-perception* and *self-development* claims respectively and examine them in turn.

At first glance the self-perception claim might seem somewhat puzzling. Of course we often say that a person's possessions reveal a great deal about his personality,³³ but it is not clear that when we say this we mean personality in the special Hegelian sense of the term. How might a person's possessions reveal his personality in the sense of his capacity for independent reflection and agency?

A clue to Hegel's meaning can be found in the 1822–3 Addition to Paragraph 44 of the *Philosophy of Right*, where Hegel suggests that by appropriating an object I manifest or demonstrate the supremacy of my will *vis-à-vis* the object. I do this by giving it a configuration which it did not have before, a configuration which reflects my end or 'soul':

to appropriate something means basically only to manifest the supremacy of my will in relation to the thing and to demonstrate that the latter does not have being in and for itself and is not an end in itself. This manifestation occurs through my conferring upon the thing an end other than that which it immediately possessed; I give the living creature, as my property, a soul other than that which it previously had; I give it my soul.

³¹ *VRP*, I, p. 256.

³² *Ibid.*, p. 254.

³³ As Knowles illustrates in the opening pages of 'Hegel on Property and Personality'.

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Much of Hegel's subsequent discussion of taking possession and using property returns to this theme of manifesting or demonstrating the supremacy of one's will in relation to the object. Physically seizing and giving a form, which are both ways of taking possession of a piece of property, are, Hegel thinks, simply variations on a third way of taking possession — making a sign. '[I]t is precisely through the ability to make a sign and by so doing to acquire things that human beings display their mastery over the latter'.³⁴ Using or consuming an object is also a way of demonstrating one's supremacy:

[With use] the thing is reduced to a means of satisfying my need. When I and the thing come together, one of the two must lose its [distinct] quality in order that we may become identical. But I am alive, a willing and truly affirmative agent; the thing, on the other hand, is a natural [negative] entity.³⁵

These passages suggest a way of understanding the self-perception claim. They suggest that a person looks at himself in his property in the sense that he sees concrete evidence that he is independent of his given circumstances or situation. By interacting with the object in various ways — by grasping it, giving it a form, marking it, consuming it, etc. — the person manifests or demonstrates his supremacy over his natural environment; he thus sees that that environment need not dictate to him what he shall be or do, that he can impose his own plans and purposes on his situation and make a difference. Or, in terms of the passage I just referred to, he gains a concrete perception of the fact that he is 'a willing and truly affirmative agent'.³⁶

The self-development claim is the claim that this experience of perceiving his independence and agency helps the individual to develop and sustain his personality itself. The claim is not explicitly defended by Hegel in his discussion of property but it can be quite easily explained in terms of several themes that are prominent in his social philosophy more generally.

The first of these themes, which Hegel often returns to, is that having a conception of oneself as free is an indispensable condition of being free. As Hegel puts it in his *Lectures on the Philosophy of World History*, for instance,

everything depends on the spirit's self-awareness; if the spirit knows that it is free, it is altogether different from what it would be without this

³⁴ *PR*, § 58A.

³⁵ *Ibid.*, § 59A. Cf. *Ibid.*, § 59: 'Use is the realization of my need through the alteration, destruction, or consumption of the thing, whose selfless nature is thereby revealed . . .'.

³⁶ This point is nicely expressed by Waldron: 'By investing a natural object with purpose an individual becomes aware of the priority of will in a world composed largely of objects that cannot actively possess it. Thus he ceases to regard himself as a mere animal part of nature and begins to take seriously the special and distinctive features of rationality, purpose, and will.' Waldron, *The Right to Private Property*, p. 302.

knowledge. For if it does not know that it is free, it is in the position of a slave who is content with his slavery and does not know that his condition is an improper one. It is the sensation of freedom alone which makes the spirit free.³⁷

This requirement that one take oneself to be free in order to be free becomes quite transparent when it comes to the freedom of personality, for, as we have already seen, part of being a person, for Hegel, is having a certain self-understanding — a sense of oneself as independent of one's given situation and ends.

The second Hegelian theme, which completes the argument, is that one cannot arrive at a sense of oneself as free simply by asserting it to oneself: 'the assertion that one is free does not suffice to make one so'.³⁸ To come to think of oneself as free, and to sustain this self-understanding, one needs to receive some kind of objective confirmation from one's surroundings that one is indeed a free and independent agent.³⁹

So the self-development claim is simply the claim that the experience of having a concrete perception of one's independent agency helps to develop and confirm the sense of oneself as independent that is an integral part of being a person. Hegel's justification of private property, then, might be expressed as follows: it is important that an individual have private property because it is important that he develop and sustain his personality — his capacities for independent reflection and agency. Private property helps to develop personality because it gives the individual a concrete perception of his independence, a perception which confirms the sense of himself as independent that is an essential part of being a person.

An obvious objection to this attempt to justify a private property system, however, is that at best it only establishes that private property is a *sufficient* condition for developing and sustaining one's personality. It does not show that a similar argument could not be made on behalf of a system of common property;⁴⁰ and surely the primary challenge faced by the defenders of private

³⁷ *LPWH*, 48. Cf. *PR*, § 21 and § 57.

³⁸ *Enc*, III, § 431A.

³⁹ This is a central theme in Hegel's account of recognition. For good discussions, see Allen W. Wood, *Hegel's Ethical Thought* (Cambridge, 1990), Ch. 4; Charles Taylor, *Hegel*, pp. 148–57; and G.A. Kelly, 'Notes on Hegel's "Lordship and Bondage"', in *Hegel's Retreat from Eleusis: Studies in Political Thought* (Princeton, 1978).

⁴⁰ Hegel assumes that the principal alternative to private property is common property (*gemeinschaftliches Eigentum*), the form of property relations found, for instance, in monasteries and recommended by Plato in his *Republic* (*PR*, § 46A). As I suggest in Section VI, below, one of the weaknesses of Hegel's account of property is that he fails to recognize that there is more than one alternative to a private property system.

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ownership is to demonstrate the *relative* superiority of private property *vis-à-vis* other kinds of property arrangements.

Hegel's only explicit attempt to meet this challenge is not particularly satisfying. He argues that, '[s]ince my will, as personal and hence as the will of an individual, becomes objective in property, the latter takes on the character of *private property*'.⁴¹ But this inference from the individuality of the person's will to the need for *private* property is not, without further argument, valid, for it ignores the important possibility that the individual person could develop and sustain his sense of independent agency by interacting with objects which are common property.⁴²

This brings me to the puzzle which will occupy us for the remainder of this paper: how might Hegel complete the argument? Unfortunately there are very few clues to be found in the published text of the *Philosophy of Right*, and so it might be thought that we have taken Hegel's argument for private property as far as it can go. But I want to try to take it a little farther by examining two important features of the background to Hegel's account. One is an argument by Fichte, which Hegel and his readers would almost certainly have been familiar with; the other is a set of pre-1820 (the year of the completion of the *Philosophy of Right*) versions of Hegel's account of property, which all emphasize the important relationship between private property and mutual recognition. By combining material from these two different sources I will attempt to reconstruct the final steps in Hegel's defence of private ownership.

IV

Property and Personality in Fichte's Social Philosophy

A number of recent books and articles have emphasized the importance of appreciating the Fichtean background to Hegel's political philosophy. This is not only because of the profound influence exercised by Fichte's writings on the development of the young Hegel,⁴³ but also because Fichte's *Grundlage des Naturrechts* remained the single most important work of political philosophy in Germany throughout the time that Hegel was developing his mature political theory.⁴⁴ Recent work has emphasized the extent to which Hegel's account of

⁴¹ *PR*, § 46.

⁴² For further discussion of this point, see Waldron, *The Right to Private Property*, p. 373.

⁴³ See, for instance, Hegel's 1802 essay *The Difference Between Fichte's and Schelling's System of Philosophy*, trans. H.S. Harris and Walter Cerf (Albany, 1977), which includes a seven-page discussion (pp. 142–9) of Fichte's *Grundlage des Naturrechts*.

⁴⁴ For a sustained attempt to argue for the relevance of Fichte to understanding Hegel's ethical and political thought, see Andreas Wildt, *Autonomie und Anerkennung* (Stuttgart, 1982), pp. 19–23 and Part III.

recognition was influenced by Fichte's *Grundlage*.⁴⁵ Less attention has been given to the relationship between Fichte's discussion of property and Hegel's own account. This is unfortunate for several reasons.

First, although there is only one explicit reference to Fichte in the published text of 'Abstract Right',⁴⁶ Hegel does mention Fichte several more times in the corresponding sections of his various lectures on *Rechtsphilosophie*.⁴⁷ It seems clear from these references that Hegel was familiar with Fichte's doctrine on property and that to a considerable extent he was sympathetic with it.⁴⁸

Second, both Fichte and Hegel discuss property in the context of the same basic problematic. The two thinkers assume a conception of agents as individual *persons* and think that a central problem of social and political philosophy is to identify the social conditions of the possibility of personality.⁴⁹ Private property, for both philosophers, is one such condition and is justified on this basis.

Finally, an important common theme runs through the justifications of property offered by each writer in that each emphasizes the way in which property allows the subjection of nature to the will's ends and purposes and the manifestation thereby of the supremacy of the will. Just as, for Hegel, 'to appropriate something means basically only to manifest the supremacy of my will in relation to the thing and to demonstrate that the latter . . . is not an end in itself',⁵⁰ so for Fichte, 'the final ground of property in a thing is . . . the subjection of that thing to our purposes'.⁵¹

⁴⁵ e.g. *ibid.*, and Wood, *Hegel's Ethical Thought*, Ch. 4.

⁴⁶ *PR*, § 79.

⁴⁷ e.g. *ibid.*, § 52A, *VRP*, 17, pp. 48, 55, 59 and 104.

⁴⁸ For instance, at *VRP*, 17, p. 55, Hegel approvingly cites Fichte's 1793 critique of Rehberg in which the discussion of property anticipates Fichte's account three years later in the *Grundlage*. For the 1793 account, see J.G. Fichte, *Beiträge zur Berichtigung der Urteile des Publikums über die Französische Revolution*, in *Johann Gottlieb Fichtes sämtliche Werke*, Volume VI, ed. I.H. Fichte (Berlin, 1845–6), esp. pp. 117–18.

⁴⁹ See J.G. Fichte, *Grundlage des Naturrechts*, in *Johann Gottlieb Fichtes sämtliche Werke*, Volume III, ed. I.H. Fichte (Berlin, 1845–6), pp. 94, 111–13. All translations from Fichte's *Grundlage* are my own. An often unreliable translation is A.E. Kroeger, *The Science of Rights* (London, 1889). For an excellent discussion of Fichte's conception of personality, and its relationship to Fichte's understanding of right and morality, see Frederick Neuhouser, 'Fichte and the Relationship Between Right and Morality', in *Fichte: Historical Contexts/Contemporary Controversies*, ed. Daniel Breazeale and Tom Rockmore (Atlantic Highlands, NJ, 1994), pp. 158–80.

⁵⁰ *PR*, § 44A.

⁵¹ Fichte, *Grundlage*, p. 117.

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Like Hegel, Fichte considers property in the context of a theory of 'right' (*Recht*) more generally.⁵² Anticipating Hegel, he uses the term to refer broadly to any kind of social institution or arrangement which is a condition of the possibility of free personality and also, more narrowly, to what we think of as rights — that is, claims which we have that place others under duties to treat, or refrain from treating, us in certain ways.⁵³ Like Hegel, Fichte hopes to establish that private property is *rechtlich* in both of these senses: it is an institution which makes personality possible; and it is therefore something which warrants placing others under certain duties — for instance, duties of non-interference. In particular, Fichte wants to show that private property is a natural or 'original' right (*Urrecht*) — one which has its basis not in any positive enactments of the political community, nor in the terms of any covenant or agreement which individuals may have entered into with one another, but only in the conditions of the possibility of free personality.⁵⁴

The identification of specific *Urrechte*, then, including the right to property, involves tracing out the social conditions of free personality. As we saw in reconstructing Hegel's theory, and as Fichte himself recognizes, this exercise presupposes that we have some idea of what is meant by free personality: 'the concept of freedom . . . gives the concept of an *Urrecht*, that is, of that right [*Recht*] to which every person as such is absolutely entitled'.⁵⁵ To be a free person, Fichte assumes, is to be only cause and never effect in the external world; a free person is any agent who has the 'capacity to be absolute first cause'.⁵⁶ This is not exactly the way in which Hegel formulates his conception of free personality, but nor is it wholly different from it either. It anticipates Hegel's idea that personality involves a sense of independence from one's given situation, a sense that that situation does not dictate what one must do or be.

Fichte recognizes several ways in which an agent can fail to enjoy this freedom. One problem might be that his ends and purposes are determined externally rather than *self*-determined; he may lack the power to formulate ends and purposes spontaneously.⁵⁷ Another is that there may be external interventions, either by nature or by other agents, which produce changes in the world he is acting on, thereby upsetting his free efficacy (*Wirksamkeit*).⁵⁸ Something more needs to be said about why this second case represents a problem for freedom, and I shall return to it in a moment.

Fichte assumes that, because *Urrechte* refer only to the *social* conditions of the possibility of free personality, they arise only with respect to the second

⁵² *Ibid.*, pp. 111–17.

⁵³ *Ibid.*, pp. 94–5.

⁵⁴ *Ibid.*, pp. 94–5, 111–13.

⁵⁵ *Ibid.*, pp. 112–13.

⁵⁶ *Ibid.*, p. 113.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*, pp. 114–16.

way in which free personality might be thwarted, and specifically with respect to interventions by other people.⁵⁹ The main social condition of the possibility of free personality, he claims, is that others not intervene in the external world on which an agent is acting:

It is only other free beings that could produce an unforeseen and unpreventable change in our world — that is, in the system of that which we have known and related to our purposes; then, however, would our free efficacy [*Wirksamkeit*] be disturbed.⁶⁰

From this premise, and from the premise that anything that is a social condition of free personality can give rise to a right, Fichte draws the conclusion that a person has a right to a sphere of the external world that is free from the interventions of others:

The person has the right [*Recht*] to demand that, in the whole area of his known world, everything should remain just as he knew it, because he depends for his efficacy on his knowledge and would immediately be disoriented, or would find the course of his causality [*Causalität*] blocked, or would obtain other results than those he intended, as soon as a change took place.⁶¹

This right, however, is nothing other than a right to private property:

Here lies the ground of all right of property. That part of the sensuous world which is known to me, and has been subjected by me, even if only in thought, to my purposes, is originally . . . my property. No one can influence it [*auf denselben einfließen*] without hindering my free efficacy.⁶²

Fichte's deduction of an original right to private property, then, can be summarized as follows: an agent has a right to whatever constitutes a social condition of the possibility of his personality. The main such condition is that there be no interventions by others into the sphere of the external world in which he is acting. But this is just to say that a social condition of the possibility of personality is that the agent have access to, and control over, a sphere of the external world from which others are barred from intervening. Since private property is, in essence, a right to exclusive access and control over some material object in the external world, it follows that individuals have a right to private property.

Although this argument raises a number of issues the key question, it seems to me, concerns why interventions by others in the world on which I am acting

⁵⁹ *Ibid.*, pp. 113–15.

⁶¹ *Ibid.*

⁶⁰ *Ibid.*, p. 116.

⁶² *Ibid.*

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can be said to thwart my free personality. Why, for example, might the fact that I am forced to share a garden in common with others frustrate my freedom as a person? I can think of two ways of construing Fichte's argument: one resembles the constitutive thesis that I mentioned at the beginning of the paper; the other anticipates, but also extends in an interesting direction, the argument I attributed to Hegel in the previous section.

On the first construal of Fichte's argument, interventions by others frustrate my freedom as a person because they constitute obstacles to the realization of my ends and purposes in the world. To be a free person, we saw earlier, is — according to Fichte — to be a cause, and never an effect, in the world. This means that among other things there should be a causal connection between my having a certain purpose and a certain state of affairs (the object of my purpose) being realized. Interventions by others can thwart my freedom simply by frustrating this causal connection. For instance, if my purpose is to cultivate roses in the garden, you can frustrate the realization of this purpose by digging up the soil for your own gardening projects.

On this reading of the argument Fichte's justification of private property is a familiar one. To be a free person one must have the opportunity to pursue one's purposes, unhindered by the actions of others. But this means — so the argument goes — that one must be the bearer of private property rights, for these rights provide an opportunity to realize one's purposes by excluding others from access.

The flaw in the argument is equally familiar. Insofar as the opportunity to realize one's purposes is concerned, a system of private property cuts both ways. It is of course true that my private property rights to certain material objects enable me to realize certain ends that might be frustrated by others were those objects common property. But it is equally true that the fact that other material objects are privately owned by other people, rather than commonly owned, thwarts the realization of certain of my ends. Whether a private property system best enables some agent to realize his ends depends on how much property he has and what his ends are. It may well be the case that the agent does better under a common property system than under a private property system.⁶³

There is, however, an alternative way of construing Fichte's argument which makes better sense of the text and which aligns it more closely with the argument that I have been attributing to Hegel. Immediately following the passages from the *Grundlage* that I have been quoting, Fichte continues:

To say that the person wants his activity in the sensuous world to be a cause [*Ursache*] is to say that he wants a perception [*Wahrnehmung*] to

⁶³ The objection sketched in this paragraph is made by Cohen, 'Capitalism, Freedom and the Proletariat', pp. 11–17.

result which will correspond to his own concept of the purpose of his activity. . . It is to be recalled that, if this is to be possible at all, the natural course of things in the future, that is, either after the active influence [*thätigen Einwirkung*] of the person, or after the purposeful omission [*zweckmässigen Unterlassung*] of an activity, must be left undisturbed.⁶⁴

The significance of this passage is its suggestion that free personality requires not only that one's purposes *have* causality but also that one has a *perception* of their causality. A similar claim is made by Fichte in the Introduction to the *Grundlage*:

In the concept of freedom lies, first and foremost, only the capacity to formulate, through absolute spontaneity, concepts of our possible efficacy . . . But for a rational individual, or person, to find himself as free something else is required — namely, that the object [*Gegenstand*] referred to in this concept of his efficacy should correspond with [his] experience, and thus that something in the world outside of him should result from the thought of his own activity. Now, should the effects of rational beings occur in the same world, so that they can influence and mutually disturb and hinder one another, as is indeed the case, then freedom — in the above sense — would only be possible for such persons under the condition that their efficacy should be enclosed within certain limits, and that the world, as the sphere of their freedom, should be divided, so to speak, amongst them.⁶⁵

Here again Fichte argues from the need for the person to perceive his own efficacy as an agent ('to find himself as free') to the conclusion that the world should be divided up amongst different people into separate spheres of influence.

The argument is most clearly made as part of Fichte's deduction of the relationship of right (*das Rechtsverhältniss*) in general.⁶⁶ There Fichte seeks to identify the conditions under which a subject 'determines himself to be a free individual' and 'constitutes his freedom and self-sufficiency'.⁶⁷ He claims that a subject can only constitute himself as free to the extent that he can see various effects taking place in the world around him as grounded in his own agency. For this to happen, the subject must be able to distinguish how far the effects taking place around him have their ground in his own agency and how far they

⁶⁴ Fichte, *Grundlage*, p. 117.

⁶⁵ *Ibid.*, pp. 8–9. For discussion of this passage, see Neuhouser, 'Fichte on Right and Morality', pp. 164–5.

⁶⁶ Fichte, *Grundlage*, pp. 41–2.

⁶⁷ *Ibid.*, p. 42.

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are grounded in the agency of other rational beings: in order to 'posit himself as an absolutely free being' the subject must be able to 'separate himself completely from the free being outside of him and attribute his free efficacy only to himself'.⁶⁸ Fichte claims that if the subject is to be in a position to conclude that *his own* agency was the ground of the effects he sees around him, then they must take place in a sphere in which only he, and not the other rational being, is free to choose:

But in this sphere, now, only the subject can have chosen and *not the other* [rational being], for he [the other] has left it undetermined, according to our assumption. What exclusively chooses in this sphere is *his* self, is the individual, who in setting himself in contrast to another rational being determines himself as a rational being.⁶⁹

So here again Fichte argues from the need to perceive one's own agency (in order to constitute oneself as a free agent) to the conclusion that the world should be divided up into separate spheres of influence.

These passages suggest that the reason why interventions by others upset free personality is not only that they constitute obstacles to one's causality or efficacy, but also that they make a perception of one's efficacy impossible. In part, of course, interventions by others make this perception impossible *because* they constitute obstacles to that efficacy. But they may also make perception of one's efficacy difficult even where this is not in fact the case. Throughout his discussion of property, Fichte stresses the ways in which the possibility of interventions by others affects the agent's knowledge of the situation: it introduces what he terms 'unforeseen and unpreventable changes . . . in our world'.⁷⁰ Where there are no interventions by others, changes in the object can be explained only by my purposes or by nature. If one assumes, as Fichte explicitly does, that the agent is sufficiently knowledgeable about the workings of nature⁷¹ then, where there are no interventions by others, he should be able to connect certain changes in the object with the plans and projects that were present in his will. On the other hand, where others have intervened the agent can no longer be confident that alterations in the object are due to *his* will; his perception of the object is not, as far as he knows, a perception of his own efficacy.

Consider, for instance, the gardener who plants and tends some tomatoes until one day they are ripe for picking. He knows that this is not something which

⁶⁸ *Ibid.*, pp. 41–2.

⁶⁹ *Ibid.*, p. 42.

⁷⁰ *Ibid.*, p. 116, quoted above on p. 590. See also pp. 114–15: 'Free efficacy and determinate knowledge condition one another mutually'.

⁷¹ *Ibid.*, pp. 114–16.

happens without human intervention and he is confident that no one else has intervened in the garden. He also knows that the project of cultivating the tomatoes just this way had been in his will all along. With the success of the tomatoes he therefore has an objective confirmation of the causal efficacy of his own plans and projects. He sees himself as someone who does not, or need not, take his situation as a given, but who can impose his own will — his own plans and projects — on that situation. By contrast if others come and go as they please in the garden, and perhaps work on it themselves, he cannot be so confident that the successful tomatoes are the result of his own efficacy. Someone else may have been taking the important measures all along.

Two comments need to be made concerning Fichte's argument, on this second construal of it. The first is that to a very considerable extent it anticipates Hegel's argument in the *Philosophy of Right*, as I set this out in the previous section. For both thinkers the rationale behind a private property system centres on the way in which private property provides the individual property holder with a concrete perception of his own agency and in this way helps to constitute him as a free person.

Secondly, however, Fichte goes even further than Hegel in attempting to explain why it is that only a private property system, and not some other set of property arrangements, can facilitate this self-perception. The problem with common property is that interventions by others make it difficult for the agent to be confident that the alterations and transformations in the material objects he has been interacting with are the result of *his* agency. He cannot be sure that they are his plans and purposes which have been imposed on the world, for they may have been somebody else's. We cannot be certain, of course, but Hegel may have been taking something like this account, which both he and his readers would have been familiar with, for granted in developing his own version of the argument.

V

Property and Recognition

No doubt a number of possible objections, both interpretive and substantive, might be made to the argument I have been developing. At this point I want to draw attention to two in particular which will help me to introduce the final piece in Hegel's defence of private ownership.

The first objection is that Hegel's argument, at least on my interpretation of it, seems strongly individualistic, and to that extent is in conflict with other more communitarian tendencies in his thought.⁷² For the argument implies both that an isolated individual could develop and sustain a free personality and that the

⁷² For the claim that Hegel's conception of personality is 'individualistic', see Stephen R. Munzer, *A Theory of Property* (Cambridge, 1990), p. 82.

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presence of others makes it more difficult for him to do this. Elsewhere, however, Hegel argues that an individual can only develop his capacities for freedom and agency in the context of a community with others which provides for mutual recognition.⁷³

The second objection is simply that there is something deeply unconvincing about the Fichtean attempt to establish the necessity of *private* property that I described in the previous section. The central thrust of that argument was that in the context of common property an agent could not be confident that changes and alterations in the material world were evidence of *his* plans and purposes, for they might have been the result of somebody else's. An obvious objection to this, however, is that I know what my purposes are and if I see that the material world comes to reflect these purposes then surely I can be confident that it was I who made a difference. It seems far-fetched to worry that somebody else might have had exactly the same plans in mind as me. Consider, for example, the case of a sculptor who spends a few hours of each day working on a sculpture in the town square. Why should there be any serious doubt in his mind that the final product reflects his own plans and purposes?⁷⁴

To see how Hegel might respond to these objections we need to introduce one final element into his account, an element which is not very prominent in the published *Philosophy of Right* discussion of property, but which is central in earlier versions of the argument. These are found not only in the Heidelberg *Encyclopedia* (VRP, I), published by Hegel in 1817, but also in the transcripts of Hegel's 1817–18, 1818–19, and 1819–20 lectures on *Rechtsphilosophie* (VRP, 17, VRP, I and VRP, 19 respectively). These versions of the argument explicitly emphasize the important relationship which Hegel sees between private property and recognition. They indicate that it is important, for Hegel, that human beings possess private property primarily because of the way in which private property mediates the recognition of others — a recognition that is essential to the development of the capacities and self-understandings which are integral to free personality. It is this element of recognition which can help Hegel to respond to the objections raised above.⁷⁵

⁷³ See, in particular, his *Encyclopedia* account of recognition: *Enz*, III, §§ 424–38.

⁷⁴ I am indebted to G.A. Cohen for suggesting this example to me.

⁷⁵ For other commentaries emphasizing the importance of recognition for Hegel's account of property, see J. Ritter, 'Person and Property: On Hegel's *Philosophy of Right*, Paragraphs 34–81', in *Hegel and the French Revolution*, trans. Richard Dien Winfield (Cambridge, Mass., 1982), p. 137; Stillman, 'Property, Freedom and Individuality in Hegel and Marx', pp. 137, 148; Knowles, 'Hegel on Property and Personality', pp. 56–7; Seyla Benhabib, 'Obligation, Contract and Exchange: On the Significance of Hegel's Abstract Right', in *State and Civil Society: Studies in Hegel's Political Philosophy*, ed. Z. Pelczynski (Cambridge, 1984), p. 172.

An initial worry is that the problem of recognition has already been dealt with by Hegel in an earlier section of his philosophical system, a section which the *Philosophy of Right* explicitly presupposes.⁷⁶ Nevertheless the *Philosophy of Right* does often return to the theme of recognition⁷⁷ and it is important to see why. The reason, I suggest, can be traced back to an unresolved problem that remains from Hegel's initial treatment of the topic.

In the struggle for recognition, agents are led by a need to affirm their own sense of agency to attempt, through force, to extract the recognition of their fellows. This attempt involves the risking of life in a deadly combat with the other. This combat arises, in part of course, because *both* agents are concerned to achieve the desired sense of their own agency: neither is willing to give up the goal of liberation without putting up a fight.

But the risking of life in combat is important for Hegel's account for another reason as well. In order to *attract* the recognition of the other, the agent needs to do something to *show* the other that he is free: each self-consciousness has, as Hegel puts it, the 'drive to *show* [*zeigen*] itself as a free self, and to be as such for the other'.⁷⁸ The other's recognition that I am free needs to be *mediated* by some demonstration by me of my freedom and independence.⁷⁹ Risking my life in combat is this kind of demonstration: it shows that I am indifferent to, and not dependent on, my natural existence. 'At this stage', Hegel explains, 'man demonstrates his capacity for freedom only by risking his own life and that of others'.⁸⁰

The violent struggle between agents is clearly of limited duration. It leads eventually either to the death or to the surrender of one of the combatants. The latter case sets up the master/slave relationship. This relationship raises an important problem: now that the combat is in the past, what mediates the recognition of the master by the slave? Now that he is no longer risking his life, what *existence* does the master give his freedom such that the slave can recognize him as free? How does he *demonstrate* his freedom to the slave?

The answer of course is that the master does *not* adequately demonstrate his freedom and this is exactly the defect of the master/slave relationship: having won the battle he slips back into a passive life of consumption and sensuous pleasure. The slave recognizes the master because he is forced to, not because there is something indicative of free agency in the master's activity. It is the

⁷⁶ *PR*, §§ 35, 57 and 71.

⁷⁷ See, for example, *ibid.*, §§ 40, 48, 51, 71, 86, 112, 113, 177, 207, 217A, 218, 238, 253, 260.

⁷⁸ *Enc*, III, § 430.

⁷⁹ As Hegel puts it in his 1819–20 lectures: 'In order to become recognised as free, I must also show myself to be free in my existence' (*VRP*, 19, pp. 73–4).

⁸⁰ *Enc*, III, § 421A.

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slave, if anyone, who gives objective existence to his agency through his disciplined activity of formative work.

The failure of the master/slave relationship is resolved by the transition to 'universal self-consciousness', which is Hegel's term for a community of mutually recognizing free agents.⁸¹ It is important to note, however, that even in this community the need for recognition to be mediated still arises. Given that agents are no longer risking their lives in battles with one another, they need to find some alternative means of demonstrating to one another that they are free. They need to manifest their agency in ways that can attract the recognition of the other. Hegel acknowledges this problem and gestures at the solution in a lecture version of his account of recognition. The individual, he claims, 'makes himself worthy of . . . recognition' by showing himself to be a rational being: he does this by obeying the law, by filling a post, by following a trade, and by other kinds of working activity.⁸²

The interesting claim which Hegel makes in many of the pre-*Philosophy of Right* versions of his account of property is that private property mediates recognition in the sense I have been outlining. In the Heidelberg *Encyclopedia* of 1817, for example, he argues: 'As a person . . . I have my realization only in the being of other persons, and only through them do I become an actual person for myself'.⁸³ The object of property is the 'medium' (*Mitte*) which makes this recognition possible. Through property my will has, for others, a 'determinate recognizable existence'.⁸⁴ In his 1817–18 lectures he argues:

Possession is essentially the externalization of the will: through the sphere of existence, I externalize my personality. Through its existence, the

⁸¹ *Ibid.*, § 436.

⁸² *Ibid.*, § 432A. Recognition needs to be mediated in a second way as well, since individuals must find ways of *expressing* their recognition of the other — something which may also require various institutions and practices. It is perhaps for this reason that Hegel associates recognition with contract (*PR*, § 71). It is implicit in the contractual relation that each party expects the other party to fulfil his commitment because it was freely and voluntarily entered into. If one party fails to carry out his obligations the other can complain: 'But nothing forced you to agree in the first place; you did so out of your own free will.' By entering into a contract with you I am expressing a recognition that you are the kind of being to whom it would be appropriate to direct this kind of complaint. I am, in effect, offering my recognition that you are a free and responsible person, capable of making choices for yourself.

⁸³ *VRP*, I, p. 146.

⁸⁴ *Ibid.* The claim that property mediates recognition is made even more explicitly in the 1827 and 1830 editions of the *Encyclopedia*; see *Enc.* III, §§ 490–1.

external being of the will creates being for another; through it, my will becomes recognizable by another.⁸⁵

In 1818–19 he notes: ‘Property only contains existence when the person becomes for another, that is to say, is recognized.’⁸⁶

This emphasis on property as a mediator of recognition is less prominent but not altogether absent from the published *Philosophy of Right* version of Hegel’s account. Hegel writes, for instance:

My inner idea and will that something should be *mine* is not enough to constitute property, which is the *existence* of personality; on the contrary, this requires that I should *take possession* of it. The *existence* which my willing thereby attains includes its ability to be recognized by others.⁸⁷

He also says: ‘A person, in distinguishing himself from himself, relates himself to *another person*, and indeed it is only as owners of property that the two have existence [*Dasein*] for each other.’⁸⁸

Once recognizability is seen as central to the ‘existence’ which property gives to personality, Hegel’s justification of property becomes much clearer. Through property, Hegel is arguing, I can confirm and reinforce my sense of being a person and of possessing the capacities which are constitutive of my personality — the capacities for independent reflection and agency. Property has this effect because it is not only a sphere in which the person can exercise his agency, but also one which records those manifestations of agency in a way that can be discerned and admired by both the agent himself and by others. If an object is the property of some person we can look at the alterations and transformations which it has undergone and believe that it was his agency which brought them about. We thus have grounds for attributing agency to him and for extending the recognition to him that we reserve for everyone that we take to be free. By manifesting the activity of his will, property mediates the recognition of the agent — both his self-recognition and his recognition by others — and thus fosters and sustains the self-understanding which he requires in order to be a person.

This final reformulation of Hegel’s defence of private ownership suggests how he might respond to the two objections I raised at the beginning of this

⁸⁵ *VRP*, 17, p. 48. See also *ibid.*, pp. 56–7: ‘Through the sphere of my freedom, which I have in property, I come into a relation with other persons . . . The essential existence of property is the existence of the rightful, absolute side [of personality], and this is that, in property, persons recognize one another . . .’, and then: ‘My existence in my property is a relation to other persons; here mutual recognition is created; the free is for the free.’

⁸⁶ *VRP*, I, p. 265.

⁸⁷ *PR*, § 51.

⁸⁸ *Ibid.*, § 40.

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section. Against the first objection, that his argument for property seems strongly individualistic, it is now possible to point to an important communitarian dimension in the account. A central part of Hegel's approach, it would seem, is to ask what sorts of institutions and practices must be in place if a community of mutual recognizing free agents is to be possible.⁸⁹ Private property, Hegel is claiming, is one such institution.

To the second objection, that the argument does not really establish the necessity of *private* property, Hegel might now respond as follows. It may be true that I know what my purposes are and that if I see that the material world comes to reflect these purposes then I can be confident that it was I who made a difference. To this extent, *private* property is not necessary; other property arrangements might do as well. But it is not the case that other people can associate changes and alterations in the material world so easily with my purposes and plans.

In a world in which material objects are common property, all others see is evidence of somebody's purposive activity (e.g. they see an igloo built in the snow). They have no particular reason to link this evidence of purposive activity with me. If the igloo were on a piece of land that is my private property, however, then they can regard it as evidence of the efficacy of my plans and purposes. They thus have reason to recognize me as a free person. Insofar as recognition by others, and not just self-recognition, is a condition of developing and sustaining one's free personality, the argument recommends private property and not just any form of property arrangements.

VI

The Limits of Hegel's Argument

I have to confess at this point that even after trying my best to present Hegel's theory in a favourable light I find the final product rather unconvincing as a defence of private ownership. Let me conclude then on a rather sceptical note by mentioning two important problems I see with the argument.

The first is that at best Hegel's argument shows that common ownership would make mutual recognition difficult and thereby hinder individuals from developing and sustaining their personalities. It seems less convincing as a critique of collective ownership, which is a second possible alternative to private property. By a system of collective ownership I mean a system of allocating resources according to centralized procedures and mechanisms

⁸⁹ cf. Benhabib's comment that Hegel 'proceeds from the standpoint of a community of individuals who come to recognise one another as persons to specify the forms of social interaction through which such recognition is concretized as a practice'. Benhabib, 'Obligation, Contract and Exchange', p. 173.

which make reference to the collective interest.⁹⁰ It seems possible that some such system could be devised which allocated to individuals the degree of exclusive access that they require to manifest their agency but which, in other respects, falls short of a system of private property. To the extent that such a system is possible, Hegel's defence of private property remains incomplete; he would need to adduce further reasons for preferring private to collective ownership.

The second more serious problem with Hegel's argument is that it seems vulnerable to the objection that there are likely to be situations in which agents can be confident that the transformation of some object is due to some particular individual's agency, even where that individual does not have exclusive access and control over the object: it might, for instance, have been transformed with the characteristic style and flourish of that individual. More generally, the argument seems insensitive to what is probably the great variety of ways in which people actually develop and sustain their capacities for agency and signal these capacities to other people. Whereas Hegel is making a priori philosophical claims about the ways in which people develop certain self-understandings and abilities, what really seems appropriate here is empirical psychological investigation.⁹¹

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⁹⁰ For the distinction between private, common and collective property systems, see Waldron, *The Right to Private Property*, pp. 37–46.

⁹¹ This is not to assume that empirical research will falsify Hegel's claims. For a discussion of recent psychological studies supporting the contention that property works to reinforce a person's sense of agency, see John Christman, 'Distributive Justice and the Complex Structure of Ownership', *Philosophy and Public Affairs*, Vol. 23, no. 3 (1994), pp. 225–50, pp. 235–8.

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HEGEL'S ANALYSIS OF PROPERTY IN THE *PHILOSOPHY OF RIGHT*

Peter G. Stillman*

Property has signal importance in Hegel's *Philosophy of Right*.¹ Hegel himself suggests property's importance by beginning his substantive text with the issue of property and then raising it in each subsequent section. Later interpreters, from Marx to the present, sometimes focus on—and in any case can hardly avoid touching on—property and its implications.² In this Article, I examine Hegel's treatment of property throughout the *Philosophy of Right* to explore several related political and legal issues that turn on one basic conundrum: Hegel's juxtaposition of extensive private property rights in his chapter on "Abstract Right," with limitations on and redefinitions of property in the major sociopolitical institutions of *Sittlichkeit* or ethical life. Or, to put the matter as a question: how and why can Hegel commence his political philosophy with a seemingly sweeping assertion of individual private property and freedom of contract rights, and at the same time present—in his discussion of the major sociopolitical

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¹ G. Hegel, *Philosophy of Right* (T. Knox trans. 1952) (1821) [hereinafter *Philosophy of Right*]; G. Hegel, *Grundlinien der Philosophie des Rechts* (J. Hoffmeister ed. 5th ed. 1955) (1821). Citations to the *Philosophy of Right* are to paragraph number. Where the material cited is from the main text of the paragraph, the number alone is given. Where it is from the "Remarks" Hegel added to the text, the paragraph number is followed by *R*. Where it is from the "Additions" that later editors appended to posthumous editions by collating student lecture notes, the paragraph number is followed by *A*. The material in *Philosophy of Right* is presented in briefer compass in G. Hegel, *Philosophy of Mind* (W. Wallace trans. 1894), which is Part III of G. Hegel, *Enzyklopädie der philosophischen Wissenschaften* (F. Nicolai & O. Poggele eds. 1969) [hereinafter *Enzyklopädie*], cited by reference to section number.

In this Article, "property" means "private property" (except where the context makes clear otherwise). I use "man" and "men" as the generic terms for human beings, partly because Hegel's translators do so, but primarily because Hegel's political philosophy sees men (i.e., males) as the major actors in civil society and state—regardless of Hegel's terminology—and so the generic term quietly takes on a strongly masculine identity.

I have treated Hegel's views on property in Stillman, *Person, Property and Civil Society in the Philosophy of Right*, in Hegel's Social and Political Thought 103 (D. Verene ed. 1980) [hereinafter Stillman, *Person*]; and in Stillman, *Property, Freedom, and Individuality in Hegel's and Marx's Political Thought*, in *Property* 130 (J. Pennock & J. Chapman eds. 1980) [hereinafter Stillman, *Property*].

² See, e.g., S. Avineri, *Hegel's Theory of the Modern State* (1972); G. Kelly, *Hegel's Retreat from Eleusis* (1978); K. Marx, *Critique of Hegel's 'Philosophy of Right'* (J. O'Malley trans. 1970); R. Plant, *Hegel* (1973).

institutions of *Sittlichkeit*—both limitations on private property and freedom of contract as well as different varieties of property and human relations, with different names and characteristics from the private property and free contract of abstract right?

This conundrum or question is important from many perspectives. In terms of Hegel's thought itself, the relation of abstract right to *Sittlichkeit* is not settled. Hegel scholars have diligently studied the rights of the person to property and contract (in "Abstract Right"). They have cogently related personal rights to the system of needs and the administration of justice (in "Civil Society"). But not enough attention has been devoted to the relation between property rights and the other major sociopolitical institutions of *Sittlichkeit*, that is, to the rest of civil society, the family, and the state.³

The relation of property to sociopolitical institutions is also important in terms of the history of political thought. Like many modern political philosophers, Hegel starts his presentation or justification of property with a single person in a presocial condition. The person asserts his right to property, and the right to property is the origin of the person's right to life and liberty. From that origin, Hegel closely links property to freedom and personality, and presents personality as an odyssey of *Bildung*. But Hegel's original presocial condition and even the priority of the right to property do not lead to Hegel's seeing that social and political life need or should reflect a monological view of property and contract (such as a possessive individualism throughout society, or the view that all important human relations be based on private property and free contract).⁴ Rather, Hegel uncovers a variety of forms of property, individuality, and social relations.

How and to what extent the law and other social institutions should reflect the norms and practices implicit in private property and free contract are prominently vexed questions in current debates in legal theory. As Hegel discusses the nexus of property, rights, freedom, contracts, and social and political associations, he argues about why and how he values property and contract, what freedom is, and how all three can be instantiated in social institutions. For example,

³ Even the best specialized studies do not attend to the full scope of *Sittlichkeit*. See J. Ritter, *Metaphysik und Politik* 256 (1969); Benhabib, *Obligation, Contract, and Exchange: On the Significance of Hegel's Abstract Right, in The State and Civil Society: Studies in Hegel's Political Philosophy* 159 (Z. Pelczynski ed. 1984) [hereinafter *State and Civil Society*]; Ryan, *Hegel on Work, Ownership, and Citizenship, in State and Civil Society, supra*, at 178; Salter, *Justifying Private Property Rights: A Message from Hegel's Jurisprudential Writings*, 7 *Legal Stud.* 245 (1987).

⁴ C.B. Macpherson, *The Political Theory of Possessive Individualism* (1962); Demsetz, *Professor Michelman's Unnecessary and Futile Search for the Philosopher's Touchstone, in Ethics, Economics, and The Law* 41, 46 (J. Pennock & J. Chapman eds. 1982).

he criticizes the contractual or (in contemporary terminology) economic analysis of the law and other social and political institutions,⁵ starting with the question of why institutions enforce restraints on alienation.⁶ He determines criteria for the alienability or inalienability of property,⁷ discusses property and personhood,⁸ and then differentiates between discrete transactions and relational contracts.⁹ In general, Hegel wrestles with problems about property and contract—and their relation to sociopolitical life—that continue to exercise legal scholarship as well as political thought and its interpretation.¹⁰

I. PROPERTY IN THE *PHILOSOPHY OF RIGHT*

Hegel first discusses property in the opening section of the *Philosophy of Right*, entitled "Abstract Right." Like many modern political philosophers, Hegel commences his exposition by stripping individuals of their political, social, and economic roles and attainments. He does not, however, use a prepolitical state of nature that is an historical construct; rather, Hegel's "abstract right" is a logical construct. The human actors in "Abstract Right" are logical abstractions from full human beings; they are persons who have *Willkür* or arbitrary free will ("to do or forbear doing"¹¹ as they wish), particular characteristics (such as age and height, needs and passions), and the normative imperative ("Do not infringe personality and what personality entails."¹²). Persons face a world of things, which are also logical abstractions from the full world of institutions and shaped nature. Things are natural objects and animals, defined by their lack of free will, different from persons, and incapable of rights.¹³

Confronting this external world, the person sees that he is limited to being only subjective by this world that, as external to him, appears different and strange. "Personality is that which struggles to lift itself above this restriction and give itself reality, or in other words to claim

⁵ G. Becker, *A Treatise on the Family* (1981); R. Posner, *Economic Analysis of the Law* (1977).

⁶ Epstein, *Why Restrain Alienation?*, 85 Colum. L. Rev. 970 (1985).

⁷ Rose-Ackerman, *Inalienability and the Theory of Property Rights*, 85 Colum. L. Rev. 931 (1985).

⁸ Radin, *Property and Personhood*, 34 Stan. L. Rev. 957 (1982).

⁹ Macneil, *Relational Contracts: What We Do and Do Not Know*, 1985 Wis. L. Rev. 483.

¹⁰ For a provocative look at these problems, see Radin, *Residential Rent Control*, 15 Phil. & Pub. Aff. 350 (1986); Ryan, *supra* note 3. My interest in the relation between property, contract, and sociopolitical life in Hegel's work was piqued by these articles.

¹¹ J. Locke, *An Essay Concerning Human Understanding* 240-41 (P. Nidditch ed. 1975). See also T. Hobbes, *Leviathan* 54 (M. Oakeshott ed. 1962) (1651) (defining will as "the last appetite in deliberating").

¹² *Philosophy of Right*, *supra* note 1, paras. 35, 36, 38.

¹³ *Id.* para. 42, 42R, 42A.

that external world as its own."¹⁴ To overcome this restriction, the person "has as his substantive end the right of putting his will into any and every thing and thereby making it his" property.¹⁵ A property is a thing that contains a person's will.

At the same time that willing is the essence of property, the person must "occupy" his property—by "grasping," "forming," or "marking"—so that others may recognize it as his.¹⁶ The person has full use of his property and he may alienate it—except for his property in himself, and in his life and liberty,¹⁷ which is inalienable—by letting it fall ownerless, by giving it away, or by exchanging it by contract.¹⁸ In a contract, property-holding persons who recognize each others' property rights freely exchange "single external thing[s]" of equivalent value according to their own arbitrary wills.¹⁹ So persons relate through the media of things and recognize each other as persons through recognizing each other's property and through the free and equal contract relation.

"Abstract Right," then, is a realm of private property and free contract among persons who are equal in terms of rights. The capacity to hold property and have other rights depends solely on bare, unencumbered, independent personhood; social status or position in political hierarchy are irrelevant. Similarly, things that can be property are sweepingly defined. For example, Hegel rejects any special status or treatment for land (as opposed to movable property) or for objects that might have religious or magical significance, that is, whose "enchantment" would have prevented them from being property.²⁰ Private property is full and complete; the owner has full use (and abuse), and can completely and cleanly alienate it. Contracts are discrete transactions; the exchange of equivalents in the market by parties who are equal (as property owners). In short, Hegel's portrayal of persons, property, and contract has many points of similarity with visions of society and freedom variously labeled modern, liberal, neo-conservative (1980s), formal, commercial, capitalistic, or market.²¹

¹⁴ *Id.* para. 39.

¹⁵ *Id.* para. 44.

¹⁶ *Id.* paras. 51, 54.

¹⁷ *Id.* paras. 57, 67.

¹⁸ *Id.* para. 65.

¹⁹ *Id.* paras. 75, 77.

²⁰ The term "enchantment" in this context is Weber's. See M. Weber, *Science as a Vocation*, in *From Max Weber* 148-55 (H. Gerth & C. Mills eds. 1958).

²¹ In this characterization, I mean to be descriptive, not to set up a straw man, and to indicate the continuing and contemporary relevance of important aspects of Hegel's abstract right. For the accuracy of this characterization in contract, see Benhabib, *supra* note 3, at 160-

When Hegel discusses property in *Sittlichkeit*, the abstractions from "Abstract Right" become actualized, full, and concrete. The person becomes a full human being: the family member in the family, the "man" in civil society, and the citizen of the state. The interpersonal recognition of property owners, the external world of things, and the imperative of right are transformed into the world of actuality with social institutions, fabricated nature, and a developed ethos of rights and duties. This actuality is rational because it is created and maintained by *Geist* or spirit, articulated and organized by the constitution, and vitalized by the constructive interactions of its major elements.²² Property too becomes concrete; the meaning and implications of abstract property and contract both continue and change. The *Philosophy of Right* reconstructs how individuals come to be free and how the external, objective world comes to be human and rational. Indeed, it shows how individuals become free as the world becomes rational, and it shows the development of interaction between person and thing, and between person and person via the medium of a thing. The development of property and contract plays a central role in Hegel's reconstruction.

II. PROPERTY, FREEDOM, AND PERSONALITY

For Hegel, property is essential for an individual's freedom. In the immanent logical development of the free will, a person's will, hitherto internal and merely subjective,²³ becomes in property "an actual will" for the first time because it gains its "first embodiment" in the external world.²⁴ For Hegel, "[m]an is implicitly rational, but he must also become explicitly so by struggling to create himself, not

66. At the same time, important dissimilarities exist between Hegel's portrayal and many that can be legitimately labeled "modern" or "liberal." For Hegel, property as a right presupposes the rights of the free will, i.e., norms and practices outside of property. See *Philosophy of Right*, supra note 1, para. 29. Property as a right cannot originate from the activities of appropriating and exchanging, but requires the (prior) mutual respect and recognition of persons. Similarly, property derives from the will (or mind or spirit), not from something natural (such as labor or first possession). Specifically, property derives from the externalization of the person's will, involving the person in more than physically laboring in nature and appropriating the fruits. Property is a matter of right and thus intrinsic to freedom. Hegel thus rejects consequentialist arguments for (or against) property and insists on private property regardless of its relation to happiness, to the satisfaction of needs, to efficiency or an increase in value, and to utility in any sense. See id. paras. 45, 45R, 191A, 241-46. For Hegel, private property is built up within a context of mutual recognition of persons and so has a social moment from the beginning. Id. para. 50. Other persons are not primarily restrictions or limitations on my holding and using my property but are essential to it, and property cannot be seen as atomistic, asocial, or presocial.

²² *Philosophy of Right*, supra note 1, paras. 157, 258R.

²³ G. Hegel, *Enzyklopädie*, supra note 1, §§ 480-81.

²⁴ See *Philosophy of Right*, supra note 1, paras. 45, 45R.

only by going forth from himself but also by building himself up within."²⁵ By putting his will into a thing and making it his property,²⁶ the person goes out from himself into the external world of nature. Through his property, the person goes forth from himself to relate to other men and to build social institutions; and, by developing his will in the natural and social worlds as well as by claiming himself, his life and liberty, as his property, man builds himself up from within as an independent and free individual.²⁷

In other words, in owning property, men act in the external world. Property is freedom because it gives the individual a scope for action and makes it possible for him to extend and expand his personality. Through their property, human beings dominate nature—liberating themselves from its toils—and create social institutions. In shaping the natural and the social world according to their intentions and goals, men develop and express their own capabilities. In reflecting on the results of their actions, men educate themselves about the world of actuality and about themselves—and thereby prepare themselves for additional action. Property, the embodiment of the free will in the world, is essential for human beings if they are to attain a developed freedom and individuality.

But for Hegel, the freedom and individuality of property have shortcomings. Although a form of freedom and necessary for individuality, property is limited because in property the will "has its freedom *immediately* in reality, in something external, . . . in a thing."²⁸ So the will in property is limited to some extent by the external characteristics of the thing the person owns and by the social context in which he owns it. Similarly, by putting his will in a thing, the person makes himself vulnerable to the vagaries that external things suffer.

Moreover, the characteristics of the abstract person are not very appealing: "To have no interest except in one's formal right may be pure obstinacy, often a fitting accompaniment of a cold heart and restricted sympathies. It is uncultured people who insist most on their rights, while noble minds look on other aspects of the thing."²⁹ The will that is content to find its freedom in property, the individual for whom his property is his highest concern, and the isolated individual

²⁵ Id. para. 10A.

²⁶ Id. para. 44.

²⁷ The assertions in this section abbreviate my two book chapters. See P. Stillman, *Person*, supra note 1; P. Stillman, *Property*, supra note 1.

²⁸ G. Hegel, *Enzyklopädie*, supra note 1, § 513. "Immediate" is for Hegel a technical term, meaning "direct" or "not mediated." Consequently, the first relating—"first" logically or temporally—is an immediate relation.

²⁹ *Philosophy of Right*, supra note 1, para 37A.

concerned only with his own desires and interests are each defective, unable fully to participate in the education and development offered by ethical life.

So the person must be educated in ways of living that are not exclusively tied to abstract rights and property. Through the understanding of morality and through the variety of social institutions of family, state, and civil society, the individual comes to be more than merely a property-owning person; he gains a concrete set of characteristics and attitudes which shape and express (indeed which are) his life.³⁰

From the point of view of *Sittlichkeit*, of social and political life, the development of abstract rights is crucial because they form the basis of the system of needs and the administration of justice in civil society. But an exclusive concern with property seems deficient. Although property is a precondition of moral action, morality rests on conceptualizations that are different from abstract rights. Moreover, for Hegel, property and contract relations seem insufficient or wrong when it comes to accurately and fully characterizing the family and the state, two central communities of ethical life.

Hegel's political philosophy is founded on property; but it is founded on property only so that it can transcend property. The fully developed individual—active outside the sphere of abstract rights, the system of needs, and the administration of justice—has moral and ethical ideals and human interactions (for example, family and state) that are not based on private property. But property nonetheless remains a permanent apparatus for carrying out a life plan, for giving reality to a conception of his own good, for his further development, and for his self-satisfaction. To the fully developed world of objective spirit, characterized by a variety of institutions and interactions, property remains a permanent dimension of freedom—actualized and guaranteed in the system of needs and the administration of justice. In Hegelian terms, then, property must be *aufgehoben*, both preserved and transcended,³¹ both in the life of the individual and in the structure of the society described in the *Philosophy of Right*.

How property is both preserved and transcended is not necessarily immediately or intuitively obvious; the process warrants examination and analysis. To state the process in non-Hegelian terms: Hegel's

³⁰ Id. para. 187R.

³¹ "*Aufgehoben*" is for Hegel a technical term (and for translators a particularly recalcitrant one). It "has a twofold meaning . . . on the one hand it means to preserve, to maintain, and equally it also means to cause to cease, to put an end to. . . . Thus what is sublated [*aufgehoben*] is at the same time preserved; it has only lost its immediacy but is not on that account annihilated." G. Hegel, *Science of Logic* 107 (A. Miller trans. 1969).

Philosophy of Right starts out with a single person, owning undifferentiated things as private property; the person's freedom and development require both that he exercise ownership of his private property and that he enter into institutions and interactions that are not derived from private property. How and why can Hegel get from the property-centered starting point of "Abstract Right" to a *Sittlichkeit* that is pluralistic, varied, and rich in types of human relations and human development as well as logically and practically coherent as a society?

III. ASPECTS OF PROPERTY IN "ABSTRACT RIGHT"

The preservation and transcending of property occurs throughout the *Philosophy of Right*. In each major institution of *Sittlichkeit*, property takes on different characteristics. But even in the section on "Abstract Right," where property is first treated extensively, Hegel prepares for modifications of private property and free contract and for varieties in the forms of property. This section and the two subsequent sections look at three aspects of property in "Abstract Right": the logical status of "Abstract Right" itself, the connection between property and personality, and the distinctions about alienation in the opening discussions.

A. *The Status of "Abstract Right"*

In Hegel's thought, even the possibility that property can be transcended or limited draws on the distinction between the role abstract right plays in his overall political philosophy and the role of the state of nature (or a similar prepolitical construct) in most other major modern political philosophies. This distinction subsists despite the parallels that can readily be drawn between Hegel's abstract right and constructs from Locke's state of nature through Rawls's "veil of ignorance."³² From their states of nature—historical or hypothetical—Locke, Kant, and Rawls derive the rights of man and certain rules about social relations. They then hold to these rights and rules as a constant paradigm, norm, or criterion of what contemporary social and political life should be. For instance, once Locke has derived in the state of nature the rights to life, liberty, estates, the use of money, and the unequal distribution of property, then Locke sees that the role of government in "civil or political society" is to maintain and protect those rights, money use, and property inequalities. For Locke, Kant,

³² J. Locke, *Second Treatise of Government* ch. 5 (C.B. Macpherson ed. 1980); I. Kant, *Metaphysical Elements of Justice* 76 (J. Ladd trans. 1965) (1797); J. Rawls, *A Theory of Justice* ch. 3, at 118 (1971).

and Rawls, not only is the state of nature primary, in the sense of coming first in order either historically or conceptually, but conclusions derived from it are also primary, in the sense of coming first in predominance. Or, as Dworkin would have it, institutions, and ideas that come later in order than those derived from the abstract original condition are always to be tested against, subjected to, and vulnerable to being "trumped" by the principles derived from the abstract original condition.³³

Given the structure of Hegel's thought, his abstract right functions in the exact opposite way. Abstract right, being first or primary in the logical order of the major parts of Hegel's political philosophy, is therefore the least adequate part of "objective spirit."³⁴ And the specific contents of abstract right—the rights, principles, and paradigms of property, contract, and annulment of crime (or punishment)—are similarly inadequate; they are primitive, thin, and insufficient.³⁵ The models of human being and of social interaction that derive from abstract rights alone are one-sided and narrow. For example, from rights alone it is difficult or impossible logically to deduce human love and love-based institutions. Moreover, abstract rights are neither self-generating nor self-maintaining but rather rely on norms and values that are external to and prior to rights. Neither possession nor exchange can itself generate the rights to property and contract. Rights require a preexisting relational structure of reciprocally recognizing persons (with free wills)—a structure that has developed historically, that represents the crystallization of certain habits and customs, and that (for Hegel) is characterized as *Sittlichkeit*. As the "minimal mode of human freedom" for individual and institution, and as dependent on preexisting social relations for their very existence as rights, abstract rights are "in radical need of correction and completion through contextualizing."³⁶ Consequently, for Hegel, the abstract rights of property and contract are always vulnerable to being modified, limited, and filled out by later developments in his text—later developments in what Hegel would call institutions of right, logical structure, social interaction, or human *Bildung*.³⁷

³³ See R. Dworkin, *Taking Rights Seriously* 240-58 (1977).

³⁴ *Philosophy of Right*, supra note 1, para. 75R.

³⁵ See Westphal, *Hegel, Human Rights, and the Hungry*, in *Hegel on Economics and Freedom* 209, 218-28 (W. Maker ed. 1987).

³⁶ *Id.* at 224.

³⁷ "*Bildung*" is a nearly untranslatable term but a central concept for Hegel's political philosophy. It means education in the broadest sense, formation, acculturation, cultivation, formative development, and maturation to a cultured and liberal state of mind. See G. Kelly, *Idealism, Politics and History* 341-48 (1969). Knox translates it as "education." See *Philoso-*

Rights must be modified and supplemented so that Hegel's person can develop fully, so that the sociopolitical world can generate relations and goals that encourage individual *Bildung* and facilitate social stability, and so that a social context can be generated in which rights can even exist.

B. *Hegel's Developmental Idea of Personality*

In addition, Hegel has a very different conception of the person from most social contract theorists. By deriving the person's rights to life and liberty from the right to property, Hegel displays a concern for the education and cultivation (*Bildung*) of the individual. A comparison with Locke may sharply bring out Hegel's concern.³⁸ Locke postulates the individual's property in himself as the original. "[E]very man has a *property* in his own *person* The *labour* of his body, and the *work* of his hands, we may say, are properly his."³⁹ Locke assumes that the individual owns himself as his own property and derives property in things from property in self. Because Locke begins with the assertion that individuals own their bodies and minds, he regards that property as a given, not as a task for the individual nor as a problem for his political philosophy.

Hegel, on the other hand, sees the right to property in things as the basis for the rights of the person to life and liberty. The person claims himself as he claims a property—through his will to own, occupy, and modify and transform himself. "[I]t is only through the development of his own body and mind, essentially through his self-consciousness's apprehension of itself as free, that he takes possession of himself and becomes his own property and no one else's."⁴⁰ So the individual's appropriation of himself as his own property—his self-conscious apprehension of himself as free—is neither automatic nor easy, but a long struggle in claiming one's self and developing one's individuality.

In short, Locke's person is socially and psychologically somewhat static and protective because he already has everything that he needs—except a government to assure that he can keep what he has. He does not need structured experiences or interactions to become a mature adult capable of acting in the modern world.⁴¹ Hegel's per-

phy of Right, supra note 1, para. 187. I frequently leave the term untranslated or use "cultivation" and "development" as limited English equivalents.

³⁸ This argument is more fully presented in Stillman, Person, supra note 1, at 140-41.

³⁹ J. Locke, supra note 32, ch. 5, § 27.

⁴⁰ Philosophy of Right, supra note 1, para. 57.

⁴¹ Many Anglo-American theorists follow Locke and Hobbes in not regarding the development of intelligent, informed, and psychologically integrated mature adults as a problem for

son, on the other hand, is dynamic and developmental. Hegel's person must work to appropriate and apprehend himself—tasks which, to be fully accomplished, require not only the content of the prepolitical condition but also, and necessarily, moral attitudes and practical experience in a range of rational social institutions. Locke's prepolitical person, given his self-ownership, is complete as given, with his rights in the state of nature. But the abstract right to property is only one aspect of the full development of Hegel's person, and other aspects lie outside abstract right.

Concurrently, Hegel holds a developmental idea of society. Again, the contrast with Locke may be helpful. Since Locke postulates the individual's property in himself as the original, he sees property as inhering in the individual as an individual, independent of and regardless of the individual's social relations in the state of nature and in civil or political society. So in the Lockean universe, the preservation of the person's property is a constant and unchanging goal for citizens and for political society. But Hegel insists that private property inheres in persons only because of their relations to other persons in a nexus of mutual recognition of personality; property is social from the start. And the social context adequate to persons with property does not, for Hegel, define and determine the ultimate social context for fully developed individuals. The social and political world Hegel envisions must grow progressively richer, more complex and more various, after abstract right, in order to generate the values and relations that can enrich the developing individuality that citizens pursue and that politics encourages.

political thinking. Among contemporaries, for instance, Richard Posner and Robert Nozick do not explore what constitutes a mature individual who is able sensibly to choose for himself or herself, i.e., to formulate a viable life plan and to make the choices needed to carry it out. Posner builds his economic analysis of the law on the "assumption that man is a rational maximizer of his ends in life, his satisfactions . . . 'his self-interest.'" R. Posner, *supra* note 5, at 1. Although he sees that contracts should not be enforced "against people deemed incapable of judging their self-interest, such as children and insane people," he presents no criteria of sane maturity nor any discussion of how it is attained. *Id.* at 49. Nozick plays out the implications of taking seriously the protection of the "full rights that a human being has." See R. Nozick, *Anarchy, State, and Utopia* 299 (1974). Nozick asserts that rights are valuable because they allow a person to shape "his life in accordance with some overall plan" and thereby to give "meaning to his life." *Id.* at 50. He raises a brief series of questions about what a meaningful life might involve, but then concludes that "I hope to grapple with these and related issues on another occasion," indicating his lack of satisfactory answers or even beginnings of answers. *Id.* at 51. Someone from a different field but with similar paucity of analysis and answers is the libertarian and psychiatrist Thomas Szasz. See Stillman, Szasz on Contract, Liberty, and Autonomy, 42 *Am. J. Econ. & Soc.* 93 (1983).

C. *Alienable and Inalienable Property, and Contractual and Noncontractual Relations*

In addition to the logical status of abstract right in his political philosophy as a whole and to the characterization of the person as dynamic and developmental, Hegel's ability to preserve and transcend property also depends on his careful differentiation between the person's alienable property in things and his inalienable property in his life and liberty. He makes this differentiation by following consistently and rigorously his definition of property, and especially by insisting that the object that is to be the property must be a single external thing, "something not free, not personal, without rights."⁴² Further, Hegel insists that "[t]he object about which a contract is made is a single external thing, since it is only things of that kind which the parties' purely arbitrary will has it in its power to alienate."⁴³

He also insists that alienation is an essential element of property. Alienation is an inevitable deduction from Hegel's concept of judgments⁴⁴ and a completion of his definition of property (a person having put his will into the thing can thereafter withdraw his will from the thing) and of the right to use property as the person wishes (including, for instance, letting it drop). The possibility of alienation leads into contract.⁴⁵ Integrating alienation into property allows Hegel to connect property with individuality, because without alienation persons would be entrapped in and determined by their property.⁴⁶

When a person claims a property by putting his will in the thing, the person has the full use and alienation of that property, so long as (here is where Hegel's definition enters) the thing that is property remains "external" and "not personal." So for Hegel, one kind of property—property in one's self, one's body and mind—must be treated somewhat differently from the paradigmatic case of property as simply the will in the thing. For Hegel, the difference in treatment arises because a person's body and mind are special kinds of things and thus special kinds of property. Unlike other property in the early discussions in "Abstract Right," the person's body and mind—though at

⁴² *Philosophy of Right*, supra note 1, para. 42.

⁴³ *Id.* para. 75.

⁴⁴ *Id.* paras. 65, 53.

⁴⁵ *Id.* paras. 73-74.

⁴⁶ Indeed, Hegel's ability to see alienation as part of the definition or concept of property displays his care and the power of his logic. See *id.* para. 53. Lacking alienation, the will can become entrapped in its property. See J. Rousseau, *The First and Second Discourses* 31 (R. Masters trans. 1964); Ryan, supra note 3, at 178, 187.

first "things" to the person because they do not yet contain his will, purposes, and personality—are immediately connected to the person and so are not external and not alienable from the point of view of others.

For Hegel, the person's body is inalienable; other persons cannot appropriate it whether the person has put his will in it and claimed it as his own. The person cannot sell, relinquish, or otherwise alienate it. A person, who is free to own and occupy property in things, must be recognized by others as owning his body, because it is only through our bodies—by speech, by grasping, forming, and marking—that we are seen to be and act in the world. It is through our bodies that our free wills manifest and actualize themselves in the world through free actions. If my body did not belong to me, I could not manifest my will in the world, because the words and actions emanating from me would not be mine. If I try to sell myself into slavery, I act wrongly because once I have claimed my body as my property, it is no longer external and impersonal to me but it is a part of me, not a thing, and thus inalienable.

Further, as the person takes possession of his self—his mind and body, his willing, his thinking, and acting—he gains as his property those substantive characteristics of himself that are not "external by nature" but that are internal to himself and "constitute" his "own private personality and the universal essence of [his] self-consciousness."⁴⁷ In other words, he gains as his own property his will and reason, his moral and religious life, and his ethical life. Once gained, they cannot be alienated because they are not single external things.⁴⁸ Unlike other property in "Abstract Right," then, the person's "substantive characteristics" are inalienable because, once they become the person's property, they are no longer external to the person and no longer external things. From the point of view of others, of course, these "substantive characteristics" are never external things but always internal to the person. The inalienability and imprescriptibility of a person's mind and body—life and liberty—are indispensable constituents of the centrality of freedom in Hegel's political philosophy.

Hegel's treatment of the rights to life and liberty is so important that it may be worthwhile to linger here briefly. Starting from a rigorous (and generally modern and market) definition of private property and free contract, Hegel has shown that persons cannot be property; human beings cannot be slaves. This inalienability of life and liberty is not "paternalistic," either in the specific denotative or the generally

⁴⁷ Philosophy of Right, *supra* note 1, paras. 65-66.

⁴⁸ *Id.* para. 66R.

negative connotative meanings of that term.⁴⁹ Rather, for Hegel the inalienability of life and liberty is built into the very definition of personality.⁵⁰ Inalienability is constitutive of personality, not accidental to or separable from it. Persons qua persons have free will and thus must potentially or actually own, permeate, and control their own minds and bodies.⁵¹ For a person to do anything that destroys his free will—to alienate his life or liberty—is for him to destroy that which constitutes himself; the freedom of the person is a necessary permanent precondition for all the rights and freedoms that the person exercises.⁵²

Equally, inalienability of life and liberty is built into Hegel's definition of property as single external things. If a human being could be the property of someone else, it would have to be because he were not a person but a thing. To admit slavery is to see human beings as

⁴⁹ See Kronman, *Paternalism and the Law of Contracts*, 92 Yale L.J. 763 (1983). Kronman seems to think that restrictions on contractual freedom must be paternalistic. See id. at 765. I suspect that "paternalism" as applied to contractual freedom is part of the discourse—persuasive (if conscious) or ideological (when not conscious)—of those who favor "negative liberty" or "freedom from." See I. Berlin, *Four Essays on Liberty* 122 (1969); Radin, *Market-Inalienability*, 100 Harv. L. Rev. 1849, 1898 n.186 (1987). I also suspect that it carries strong perjorative overtones (as being suited only to minors and to barbarians, see J. S. Mill, *On Liberty* (1859)); and that it serves as a red flag to mark interference (most likely illegitimate) in that negative liberty. Contractual freedom is to be seen as the rule and "paternalism" as the exception, requiring justification. Calabresi & Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 Harv. L. Rev. 1089 (1972); Kronman, *supra*, at 765. Kronman also treats the term "restrictions" as the exception. Id.

⁵⁰ Without the inalienability of life and liberty, Hegel could not assert that in the modern world: "All are free." G. Hegel, *Philosophy of History* 104 (J. Sibree trans. 1955) [hereinafter *Philosophy of History*]. The modern world witnesses freedom in "its purely universal form—man as such is free." G. Hegel, *Lectures on the Philosophy of World History: Introduction* 130 (H. Nisbet trans. 1975) [hereinafter *Philosophy of World History*].

⁵¹ See *Philosophy of Right*, *supra* note 1, para. 35. Whereas Hegel bases inalienability of freedom in the constitution of personality, John Stuart Mill may anchor it in his "principle of freedom," which requires that individuals always be free agents, i.e., always retain their freedom, and so may not alienate it. See LaSelva, *Selling Oneself into Slavery: Mill and Paternalism*, 35 Pol. Stud. 211, 217-20 (1987). Hegel, Mill, and Kronman all reject unlimited contractual freedom. Their conclusions are in some ways strikingly similar but the language in which they phrase their arguments differs; neither Mill nor Hegel use "paternalism" or "restrictions" as central terms. See *supra* note 49.

⁵² Economistic theorists, who reason deductively from such standard neoclassical economic assumptions as atomistic individuals voluntarily pursuing their self-interest (i.e., with *Willkür*) in a condition of formal freedom, or "freedom from," see *supra* note 49, and who in effect apply the economic paradigm to law, philosophy, or politics, assert that individuals may alienate their liberty. These theorists ignore the temporal dimension of freedom; they in effect assert that individuals are free, *now*, to do anything (including alienating their freedom); they do not care about maintaining individuals in a *continuing* condition of freedom (a goal that prohibits certain current actions, such as selling oneself into slavery). See R. Nozick, *supra* note 41, at 331. They also portray the (bizarre) good society or utopia as one in which not all but only some are free, and others are or may be slaves. See *Philosophy of History*, *supra* note 50; *Philosophy of World History*, *supra* note 50.

things, as nonhuman, as essentially natural beings like any other bit of nature, no different from trees (except less stately than elms, but more mobile) or billiard balls (except less geometrically perfect, even if more imaginative).⁵³ And to see any human beings as natural beings pure and simple—which is to see human beings as things—is to remove human beings as a universal category from participation in entitlements and rights.⁵⁴ Persons, free and with rights, are in a network of mutually recognized and respected rights and entitlements. If some human beings are slaves, then such slavery is the assertion that human beings are only natural beings and are to be used.

Moreover, Hegel's arguments about persons, things, and property leads him to assert essentially the freedoms of bodily and personal integrity. Not only does his argument oppose slavery and serfdom, but also the frequently asserted claims of a husband to property in his wife's body and of parents to property in their children's bodies.

At the same time that Hegel asserts the person's inalienable rights to life and liberty, he argues that human beings can create new "things" that are property by externalizing some portion of themselves into the objective world. For example, an object of fabricated nature (that in civil society can be used to satisfy needs) contains (externalized) human labor as well as natural thing-hood. Hegel argues that a book, and each single copy of the book, is the externalization (the printing on paper) of the ideas of the author, and hence a thing that can be sold and used by others. At the same time, the "means of expression" of the ideas are part of the author's mind and still belong to him. Therefore copyrighting is proper, and pirating books and plagiarizing ideas are wrong.⁵⁵ Similarly, Hegel argues that discrete portions of a person's skill (an object produced by labor) and a person's time (an hour of labor) are externalizations from the totality of personality. Piecework and hourly wage-labor are legal, because they are limited, whereas slavery is wrong, because it involves the whole range of the individual—all the skills and all the time.

Single products of my particular physical and mental skill and of my power to act I can alienate to someone else, and I can give him the use of my abilities for a restricted period; because, on the strength of this restriction, my abilities require an external relation to the totality and universality of my being.⁵⁶

⁵³ *Philosophy of Right*, supra note 1, para. 57R.

⁵⁴ *Id.* para. 45R.

⁵⁵ *Id.* paras. 66-69.

⁵⁶ *Id.* para. 67 (footnote omitted). By "external" Hegel seems to mean externality not in a physical sense but in a psychological or personal sense. For Hegel himself, the line is not

To rephrase (and invert) Hegel's statement in terms of his characterization of property: property involves the full use of the thing; if a laborer restricts the use of his labor to delimited periods of time, his employer does not have the full use of his labor (but only the limited use of his labor), and so does not own the laborer and the laborer is not a slave.

Hegel's discussion of copyright, plagiarism, and labor contracts leaves many uncertainties. For example, is it, as Marx suggested, wage slavery if the worker, in selling discrete hours of his labor, ends up selling the totality of his existence, one hour at a time?⁵⁷ Hegel's formulations are vulnerable to such questions, and because Marx faithfully read Hegel, those formulations may even encourage the reader to find such uncertainties. As Hegel himself notes in discussing specific dilemmas that arise in defining plagiarism, "there is no precise principle of determination available to answer these questions, and therefore they cannot be finally settled either in principle or by positive legislation."⁵⁸

Just as Hegel's discussion of what is alienable hinges on property being "single external thing[s]," so too does his discussion of what can be contractual. For Hegel, the strict definition of property and contract means most especially that neither marriage nor the estate can be contractual relations.⁵⁹ In a lament that could be made today, Hegel complains that "[t]he intrusion of . . . contractual relation, and relationships concerning private property generally" into thinking about the state "has been productive of the greatest confusion in both constitutional law and public life."⁶⁰ Theorists who see the family

sharp, because the "modern domestic servant or day-labourer" who alienates limited blocks of time undertakes, in those formally limited blocs, labor that is frequently drudgery with little intellectual content. *Id.* para. 67A. For a critical reading of Hegel here, see Radin, *supra* note 49, at 1892-94. See also *infra* note 57 (comparing wage labor in Marxist theory versus capitalist economic theory).

⁵⁷ For Marx, the wage-laborer, contracting away his labor-power by the hour or week, clearly sold himself, his whole life and being. In capitalism, "it is self-evident that the labourer is nothing else, his whole life through, than labour-power, that therefore all his disposable time is by nature and law labour-time, to be devoted to the self-expansion of capital." 1 K. Marx, *Capital* 271 (F. Engels ed. 1967) (1867). Marx then shows how capitalism does not allow the laborers time for freedom, *Bildung*, or health. He argues that it puts workers in a position worse than slavery, and concludes that "the 'free' labourer . . . agrees, i.e., is compelled by social conditions, to sell the whole of his active life, his very capacity for work, for the price of the necessities of life, his birthright for a mess of pottage." *Id.* at 264-71.

⁵⁸ *Philosophy of Right*, *supra* note 1, para. 69R. On many issues, Hegel thinks that philosophy of law cannot determine the content of positive law. On some, such as here, philosophy cannot even determine the principle with adequate specificity. See also *infra* note 73 (discussing relation of philosophy of law to positive law).

⁵⁹ *Philosophy of Right*, *supra* note 1, paras. 75, 75R.

⁶⁰ *Id.* para. 75R.

and the state in contractual terms "have transferred the characteristics of private property into a sphere of a quite different and higher nature."⁶¹

In sum, starting even in the section on "Abstract Right," where property seems at first to be defined in unequivocal, unambivalent, and far-reaching terms, Hegel follows precisely the meaning and implications of his definition of property. That path leads him to see that slavery is illegitimate because it is incompatible with free personality, that wage labor and other limited externalizations of self are legitimate even though surrounded with ambiguity, and that the scope of contractual relations (and consequently of contractual thinking) must be limited. In other words, Hegel moves from the apparently undifferentiated beginning point of private property as the will in the thing—free, complete, and alienable—to the crucial development of the person's inalienable rights, rights compatible with both bodily integrity and the creation of externalizations. He then moves to limit private property and free contract to their proper practical sphere of relations about single external things, so that the family and the state are not seen purely in contract terms, in property terms, or (as at present) in economic terms.

IV. PROPERTY IN *SITTlichkeit*: A SUMMARY

Beyond the limits of "Abstract Right,"⁶² Hegel's discussions of property in "Ethical Life [*Sittlichkeit*]" continue to involve precise distinctions and careful attention to circumstances—of the thing that is the property, the human beings and their *Bildung* or development, and the institutional context. As those distinctions and circumstances require, the characteristics defining property in abstract right are modified in *Sittlichkeit*. Because property's characteristics, attendant distinctions, and circumstances are important in every major area of ethical life, it may be helpful to summarize briefly the next few sec-

⁶¹ Id.

⁶² Private property is discussed briefly in "Morality." In that section, morality is presented as based on neither private property nor free contract, indeed as based not on the relation of will to thing (which permeates abstract right) but on the relation of the particular will to the universal or moral will. See *Philosophy of Right*, supra note 1, para. 106R. Morality does, however, attempt to solve problems that are beyond the ken of private property. The relation of particular to universal will is not solvable within abstract right. See id. para. 102. Nor is it solvable, for example, within Locke's state of nature, where an individual may always act against the laws of nature. See J. Locke, supra note 32. Finally, property must give way when morality demands; when "in extreme danger" and even though "in conflict with the rightful property of someone else," an individual "may claim (as a right, not a mercy) a right of distress," a right to appropriate another's property in order to live. *Philosophy of Right*, supra note 1, para. 127.

tions as they treat different dimensions of civil society, the family, and the state.

Property gains embodiment differently in different institutions of *Sittlichkeit*. In civil society, both the system of needs and the administration of justice involve substantially a translation into concrete terms of the paradigmatic property of abstract right—the will in the thing, which has been occupied and which can be freely used and alienated. In the system of needs, the concretization of abstract rights serves to satisfy the needs of the concrete person. In the administration of justice, the concretization of abstract rights serves to assure his legal rights and freedoms. But two other major institutions of civil society limit aspects of that paradigmatic property. The public authorities work to assure the satisfaction of needs by regulating prices and trade, especially the prices of daily necessities and the dislocations attendant on foreign trade. Their intervention in the price structure, tariffs, and the flow of trade, limits and in some cases prevents the free use and alienation of property. In the corporations,⁶³ the corporation member finds scope for liberality and rectitude, as his free use and alienation of property are affected by the norms and goals of the corporation. He must contribute to the corporation's charitable undertakings and he seeks recognition, not maximum income.

In the family, the unity of the marriage partners in love and the intimate community of parents and children mean that the person is transformed into community member. Private property is thus transformed into communal resources, to which every member of the community has a rightful claim and which should not be disposed according to the arbitrary will of the paterfamilias, who should be not so much the private owner as the trustee of the resources. The children, as potential adults, cannot be claimed as any one's private property just as, in abstract right, the person's body is a unique "thing" because it cannot be claimed as property by anyone other than himself. Further, the children have the claim to be educated by their parents to autonomous and free adulthood.

The state too is a community, whose citizens are community members. The state has a legitimate claim (taxation) on the citizens' use and alienation of property; and, in its necessary exercise of sovereignty, it can legitimately require its citizens to defend it by fighting,

⁶³ Corporations are not solely or even primarily business corporations. More like Tocquevillian associations, they are voluntarily organized groups that meet for shared purposes; business corporations, churches, interest groups, charitable societies, etc. See 1 A. de Tocqueville, *Democracy in America* 191-98 (P. Bradley ed. 1945). In his translation, Knox consistently capitalizes "corporation." *Philosophy of Right*, supra note 1. Except when quoting, I do not.

thereby putting at risk their lives—the full compass of their individuality and earthly being. To put these issues from the point of view of the citizen: the citizen of the state sees the state not merely as protecting his personal rights and his property but as providing him the context in which he can grow to a mature self-development. The citizen sees the state as providing him with the substance of his life, the social contexts, institutions, and interactions that motivate him (and his fellow citizens), generate goals for him (and his fellow citizens), and help give meaning to his life (and the lives of his fellow citizens). The state, as the substance that has done so much for each individual citizen, has a claim on each to act; and to fight, if need be, to defend and protect the state (and, thereby, the individual's fellow citizens, past, present, and future).

V. PROPERTY IN CIVIL SOCIETY

In the system of needs in civil society, private property and free contract have extensive play. The human being (*Mensch*) of the system of needs, with his multiplicity of differentiated needs⁶⁴ finds himself unable to satisfy those needs through unworked nature or unclaimed things, because almost everything is owned by someone as property. So he can satisfy his needs only through "external things, which . . . are . . . the property and product of the needs and wills of others . . ." ⁶⁵ These properties can be obtained only through his own work and effort in a complex system of "interdependence of each on all" in which each man contracts with others, alienating his own property (for example, money) for whatever properties (goods and services) he wishes for the satisfaction of his needs. Following Smith, Say, and Ricardo, Hegel sees the system of needs as a locus of the free play of the individual's arbitrary will and self-interest, as he works, earns, and exchanges freely to satisfy his needs, interests, and whims, that is, to gain properties that he can use.⁶⁶ His activities occur within a system of interdependence differentiated into classes or estates (*Stände*).⁶⁷ The three major classes are defined in terms of types of property and work: the "substantial" or agricultural estate owns land and tills the soil; the "business class" owns moveable property and crafts it, manufactures it, or trades it; and the "universal class," the class of civil servants, has as its task "the universal interests of the community" and so is divorced from working raw material and from

⁶⁴ See *Philosophy of Right*, supra note 1, para. 190.

⁶⁵ Id. para. 189.

⁶⁶ Id. para. 189R.

⁶⁷ Id. para. 201.

the (narrow self-)interests that could result from property in their jobs or the state.⁶⁸ When an individual chooses his class position, "natural capacity, birth, and other circumstances have their influence." But "the essential and final determining factors are subjective opinion and the individual's arbitrary will, which win in this sphere their right, their merit, and their dignity."⁶⁹ Because the system of needs overflows with particularity, the universal is present only as the form.⁷⁰ "[T]he principle of this system of needs contains absolute universality, the universality of freedom, only abstractly and therefore as the right of property."⁷¹

Likewise, in the administration of justice in civil society, the major aspects of property have extensive scope. Indeed, the administration of justice "gives abstract right the determinate existence of being something universally recognized, known, and willed, and having a validity and an objective actuality mediated by this known and willed character."⁷² Abstract right is posited as positive law, known by all, and applicable to specific cases. Hegel strongly advocates codified law (as opposed, for instance, to common law) and sees that his conceptualization of abstract rights is congenial to a sound codification.⁷³ Be-

⁶⁸ Id. paras. 203-05.

⁶⁹ Id. para. 206.

⁷⁰ Id. para. 181.

⁷¹ Id. para. 208.

⁷² Id. para. 209.

⁷³ For Hegel, the relation of philosophy of law to positive law is complex. Very briefly, philosophy of law contains the guiding philosophical principles (in abstract right) of law including the principle that the law should be codified, because in a proper code the law is expressed and apprehended as determinate and with universality of thought. See id. paras. 40R, 211R. Positive law is the specification in statutes of these guiding principles. Id. paras. 211-14. Some slippage always exists between philosophy of law and positive law. Because legislation is part of the spirit of the people, specific statutes will vary from one country to another. Id. paras. 3R, 218R. Because the positive laws of different countries are in different stages of codification and in different stages of historical development (from feudal principles to modern ones), different countries will differ in the degree to which their positive law reflects the philosophy of law. Id. paras. 62R, 211R. Finally, positive laws will vary because of the necessary contingency involved in moving from universal principles to specific instances: "Reason itself requires us to recognize that contingency, contradiction, and show have a sphere and a right of their own . . . and it is irrational to strive to resolve and rectify contradictions within that sphere." Id. para. 214R. So, regardless of the clarity with which the principles of abstract right may be known, contingencies and inadequacies exist in all codes of positive law. A legal code can never be complete, despite the "morbid craving" for completion by "German scholars chiefly." Id. para. 216R. The penalty for a criminal offense cannot be settled unambiguously by principle; "[r]eason cannot determine, nor can the concept provide any principle whose application could decide" specific monetary fines or specific length of imprisonment. Id. para. 214R. Frequently the legal principles may not be settled unambiguously. Plagiarism is such a case where the issue is quite specific (compared to abstract rights generally), many steps removed from the universal principles of abstract right, and subject to all sorts of cross-cutting considerations. Are laws against plagiarism more effective than the

cause of the generality and breadth of his definition of property, Hegel can insist that "[o]bjectively considered, a right arising from a contract is never a right over a person, but only a right over something external to a person or something which he can alienate, always a right over a thing."⁷⁴ Hegel rejects the inconsistencies and the misleading categorizations that he believes permeate Roman law and Kantian thought. A sound Hegelian codification would treat all matters of "abstract personality," of the rights of persons to things, under one heading.⁷⁵ Hegel's broad definition of property produces powerful implications for codified law and a coherent administration of justice.

Whereas the system of needs focuses on the alienation or exchange of properties and their use to satisfy needs, the administration of justice concentrates on the (contractual) manner by which they were occupied, particularly the terms of the contract or the marking of the property. "In civil society, property rests on contract and on the formalities which make ownership capable of proof and valid in law."⁷⁶ The central definitional characteristics of property (and its alienation through contract) exist in concrete, institutionalized form in both the system of needs and the administration of justice.

In other words, Hegel connects intimately property and contract

feeling of honor. Would laws undercut honor? Given what we would like in the best possible world, what is possible in this one? See *id.* para. 69R; *supra* note 58. Nonetheless, plagiarism is a significant issue and needs a legal resolution. Indeed, I think that many issues that produce long, learned, and frequently excellent articles in law reviews are like plagiarism for Hegel; they are too specific, too distant from abstract rights, and too much cases of balancing and rebalancing for Hegelian philosophy to provide an answer, even though they require an answer and therefore need to be subjected to legal reasoning.

Positive laws—with its contingencies, shortcomings, and ambiguities—are then applied by judges. To emphasize the universality of the codified law as well as the legislating process of the state that enacts the law, Hegel wishes to limit the scope of judicial interpretation. Judges should be bound by the law code and not by precedents, so that judges—as they follow and especially as they make precedents—will not be legislators. *Id.* para. 211R. Judges' discretion should be minimized, limited to matters that the rational principles of law cannot reach; for example, length of sentence and matters where the code's imperfections or incompleteness raise conflicts and problems. *Id.* paras. 211R, 225-26. As members of the class of civil servants, judges can make suggestions about needed reforms in the law code to their superiors in the state bureaucracy. See *id.* para. 287.

In the application of positive law in a court of law, questions of fact are determined by juries. *Id.* para. 227. It may be worth noting that Hegel advocates juries regardless of whether they be inefficient in an economic sense. Even if everyone agreed that the administration of justice was without doubt managed better by professional lawyers and without lay institutions like juries, "it still does not matter for on the other side there is always the right of self-consciousness," insisting that the accused be tried by a jury of peers. *Id.* para. 228R.

⁷⁴ *Id.* para. 40R.

⁷⁵ *Id.*

⁷⁶ *Id.* para. 217.

in abstract rights with the system of needs and the administration of justice. Three important connections exist. First, for Hegel, the arbitrary free will that characterizes the person of abstract rights is reproduced in the "concrete person" of civil society,⁷⁷ who is a mixture of caprice and natural need. Although a minimal element of freedom, this voluntariness or capricious choosing is an essential dimension of full subjective freedom for Hegel and the crowning achievement of modern civil society, "which has for the first time given all determinations of the Idea their due."⁷⁸ Hegel values free choice because it encourages individual "particularities," it activates individual energy,⁷⁹ it leads to variety,⁸⁰ and it inclines individuals to think about their own selves, interests, and private ends⁸¹ and to act in pursuit of these private ends. Concurrent with these "particularities," Hegel thinks the choosing man of civil society will come to see the interdependence of men on each other,⁸² their common project of developing civilizing needs⁸³ and work,⁸⁴ and the education that each must undergo to comprehend and live in civilized interdependence in civil society and the state.⁸⁵ The freedom of the marketplace and the law courts, the actualized freedom of private property and contract, is a minimal but essential moment of freedom.

The second important connection between abstract right and civil society is that private property and free contract serve as the theoretical basis and justification for the free exchange of the system of needs and the jurisprudence of public, codified law in the administration of justice. Whereas social contract theorists like Locke use property and contract as the bases of the state, Hegel sees that any modern concept of property and contract cannot properly serve as a metaphor for the state.⁸⁶ "If contract is understood in its specifically modern sense as 'the exchange of equivalents' in the market place, then it cannot be used as a norm to define the grounds of political authority in the modern state."⁸⁷ But property and contract can properly "fulfill a *double* function of legitimation: they serve as the philosophical foundation of modern positive law, and they justify

⁷⁷ Id. para. 182.

⁷⁸ Id. para. 182A. See id. para. 206R.

⁷⁹ Id.

⁸⁰ Id. para. 182A.

⁸¹ Id. para. 181.

⁸² Id. para. 183.

⁸³ Id. para. 190.

⁸⁴ Id. para. 197.

⁸⁵ Id. para. 187R.

⁸⁶ Id. para. 75R.

⁸⁷ Benhabib, *supra* note 3, at 164.

modern relations of exchange in the market place."⁸⁸ What underlies, justifies, and legitimates modern law and modern market exchange is not any utilitarian consideration (like the wealth of the nation, value, economic efficiency, or GNP) but rather the rights of the person.

Third, however, freedom as choice and abstract right as legitimation of the law and the market both suggest the limits to the value of abstract rights. The capricious freedom of the man of civil society is, like the *Willkür* (arbitrary free will) of the person,⁸⁹ limited, one-sided, and partial, and thus incomplete and insufficient by itself.⁹⁰ To consider freedom solely as the freedom to choose—voluntariness or *Willkür*—is inadequate because the focus on choice alone ignores the constrained alternatives available to be chosen, the ways in which the individual is dependent on forces beyond his control, and the coercion of the institutional setting, the market in which choice occurs.

For example, while the person of abstract right and the man of civil society can choose, the contents of their mind—that which is available for them to choose from—may well be severely limited or constrained. As Kant worries, they may be heteronomous;⁹¹ as Rousseau fears, they may be slaves to their passions;⁹² and, as concerns Hegel, they may not adequately reflect on their own choosing in order to become independent and self-determining.⁹³ Equally, their freedom is mean if the alternative choices offered to them by external circumstances are all unpalatable. For Hobbes and his successors, "fear and liberty are consistent; as when a man throweth his goods into the sea for *fear* the ship should sink, he doth it nevertheless very

⁸⁸ Id. at 167.

⁸⁹ See *supra* notes 23-61 and accompanying text.

⁹⁰ For this assertion defended more extensively than is possible in the next couple of paragraphs, see Stillman, *Partiality and Wholeness: Economic Freedom, Individual Development, and Ethical Institutions in Hegel's Political Thought*, in *Hegel on Economics and Freedom*, *supra* note 35, at 65, 70-77; see also *Hegel on Economics and Freedom*, *supra* note 35 (other chapters in this volume with similar interpretations of Hegel); Baker, *Property and Its Relation to Constitutionally Protected Liberty*, 134 U. Pa. L. Rev. 741 (1986) (similar interpretations of voluntary or arbitrary freedom).

⁹¹ I. Kant, *Groundwork of the Metaphysics of Morals* 69-71, 87-95 (H. Paton trans. 1964).

⁹² J. Rousseau, *The Social Contract* (J. Masters trans. 1978).

⁹³ *Philosophy of Right*, *supra* note 1, para. 187R. Kant, Rousseau, and Hegel—and Baker, *supra* note 90, at 788—would probably agree with Thorstein Veblen's sardonic portrayal of hedonistic man as

a lightning calculator of pleasures and pains, who oscillates like a homogenous globe of desire of happiness under the impulse of stimuli that shift him about the area, but leave him intact. . . . Self-imposed in elemental space, he spins symmetrically about his own spiritual axis until the parallelogram of forces bears down upon him, whereupon he follows the line of the resultant.

T. Veblen, *Why Is Economics Not an Evolutionary Science?*, in *The Place of Science in Modern Civilization and Other Essays* 73-74 (1942).

willingly, and may refuse to do it he will: it is therefore the action of one that was *free*."⁹⁴ But for Hegel such circumstances produce at best a thin and constrained freedom.

Moreover, the competitive-contractual system of needs imposes on individuals limited and unappealing ways of thinking and acting. Every man "becomes in some measure a merchant,"⁹⁵ caught up in getting and spending, in the quest for mere life; equally, every burgher spends much of his time following the habits of the Smiths, keeping up with the Joneses, or buying goods and services to satisfy a need newly created "by those who hope to make a profit from its creation."⁹⁶ Human relations are reified and instrumentalized, mediated by money in calculated and utilitarian contracts.⁹⁷ Men are thrown into positions of subservience and dependence. As Hegel lectured, the individual man "must frequently make himself a means to others, must subserve their limited aims, and must likewise reduce others to mere means in order to satisfy his own interests."⁹⁸ Finally, the men of civil society are subservient to the system as a whole. Membership in civil society is not a matter of choice. "[C]ivil society . . . draws men into itself and claims from them that they work for it, owe everything to it, and do everything by its means."⁹⁹

The freedom of the system of needs is partial and limited, and abstract rights' legitimating civil society shows up the partiality and limits of both abstract rights and civil society. Because abstract rights legitimate civil society, they cannot for Hegel legitimate the state and the family. The legitimating influence of property and contract is defined and confined to parts of civil society and excluded from other central *sittlich* institutions. Moreover, just as abstract rights are not sufficient on their own but require both normative presuppositions (such as rights and the free will¹⁰⁰) as well as other institutions (such as morality and *Sittlichkeit*) because they break down on their own (in Hegel's equivalent of Locke's state of war¹⁰¹), so too civil society (especially the system of needs) is not sufficient on its own. Most obviously in Hegel's presentation, formally equal contracts in civil society produce highly inequalitarian results in an "inner dialectic of civil soci-

⁹⁴ T. Hobbes, *supra* note 11, ch. 21. Comedian Jack Benny played humorously on the meanness of a similar choice when a robber's threat, "Your money or your life!" produced in the miser extended and deep contemplation.

⁹⁵ I A. Smith, *The Wealth of Nations* (Dublin 1776).

⁹⁶ *Philosophy of Right*, *supra* note 1, paras. 191A, 192A.

⁹⁷ *Id.* paras. 75, 80.

⁹⁸ G. Hegel, *Aesthetics* 149 (T. Knox trans. 1975).

⁹⁹ *Philosophy of Right*, *supra* note 1, para. 238.

¹⁰⁰ *Id.* paras. 4-33.

¹⁰¹ *Id.* para. 102.

ety" that leads it to generate a class of poverty-stricken rabble whose distress civil society itself cannot heal.¹⁰² Hegel's study of Sir James Steuart's *Principles of Political Economy*,¹⁰³ and of the English economy generally, convinced him that the modern exchange economy has a constant tendency to fall into disequilibrium and disorder. So the system of needs in particular and civil society in general require institutions outside of themselves to regulate and order them. Their own insufficiencies show that they (and the freedom they instantiate) cannot be the final and sufficient institutions of *Sittlichkeit* nor the locus of full freedom.

Property, alienation, and contract are treated differently in the other two major institutions of civil society, the police (or public authority) and the corporations, whose functions are "[p]rovision against contingencies still lurking in [the system of needs and the administration of justice], and care for particular interests as a common interest."¹⁰⁴ Some essential functions of the public authority are to uphold property, alienation, and contract. Like contemporary police, Hegel's institutions enforce the law; like contemporary governmental agencies, they also superintend education.¹⁰⁵ But other important functions of the public authority impinge upon free alienation and contract. They are charged with keeping economic order in domestic trade, minimizing dislocations resulting from foreign trade, maintaining welfare for the needy, and assuring that everyone is able effectively to exercise rights and participate in the system of needs.

The public authority intervenes in the domestic economy to adjust, adjudicate, and balance the "differing interests of producers and consumers" by, for instance, fixing prices of necessities such as bread.¹⁰⁶ If circumstances abroad threaten the country's economy, the public authority also intervenes in international trade by, for instance, setting tariffs. "[P]ublic care and direction are most of all necessary in the case of the larger branches of industry, because these are dependent on conditions abroad and on combinations of distant circumstances which cannot be grasped as a whole by the individuals tied to these industries for their living."¹⁰⁷ Traders may not know enough to act wisely, and the results of sudden imbalances in trade can be "tensions"¹⁰⁸ which should be abbreviated by judicious action

¹⁰² Id. paras. 185, 195, 241-48.

¹⁰³ J. Steuart, *Principles of Political Economy* (London 1767).

¹⁰⁴ *Philosophy of Right*, supra note 1, para. 188.

¹⁰⁵ Id. paras. 233, 239.

¹⁰⁶ Id. para. 236.

¹⁰⁷ Id.

¹⁰⁸ Id. para. 236R.

by the public authority.

Finally, the public authority is charged with the double task of maintaining the welfare of impoverished members of civil society and ensuring that they can participate fully in the system of needs. The public authority uses tax money to act as trustee to some poor persons, to provide public charity for others, and to "take[] the place of the family where the poor are concerned in respect not only of their immediate want but also of laziness of disposition, malignity, and the other vices which arise out of their plight and their sense of wrong."¹⁰⁹ The public authority also acts to assure that the poor still engage in the socializing activities of the system of needs, that is, that they work, develop needs in interaction with others, and exchange goods and services by contract.

In the instances of trade, where Hegel advocates intervention and active oversight by the public authority, because he thinks that the claims of the public are more weighty than the right of free alienation and contract, Hegel is directly at odds with many whose thought involves a single-minded or blunt use of property rights, such as David Ricardo, who insists that such "distress" from trade dislocations "is an evil to which a rich nation must submit."¹¹⁰ Similarly, in terms of welfare, Hegel and Ricardo disagree. Ricardo insists that regardless of level of wages and the incidence of poverty, "like all other contracts, wages should be left to the fair and free competition of the market, and should never be controlled by the interference of the government."¹¹¹

Hegel's differences with Ricardo about the role of the public authority have three roots. One is (probably) that Hegel held Sir James Steuart's idea that market transactions, to result in contracts not overly skewed by market-created duress and inequality of power, required "double competition"—competition among both buyers and sellers—if the market were to function smoothly and fairly, and therefore not in need of governmental intervention.¹¹² For Steuart, "single competition," for example, where one seller is negotiating with a plurality of buyers (that is, a company offering to establish a facility de-

¹⁰⁹ Id. paras. 240-45.

¹¹⁰ D. Ricardo, *Principles of Political Economy and Taxation* 177 (3d ed. 1821).

¹¹¹ Id. at 61.

¹¹² 2 J. Steuart, *An Inquiry into the Principles of Political Oeconomy* (1767). Steuart admits to difficulty in finding language helpful in expressing his idea. In connection with voluntariness, note that Steuart is attempting to describe the circumstances necessary for voluntary exchange to be just or equitable and not mean, as it can be with Hobbes, Benny, and many economic thinkers. See *supra* notes 90-94 and accompanying text; R. Nozick, *supra* note 41, at 262; Stillman, *supra* note 41, at 97-98, 100 n.8.

sired by a dozen cities), puts the seller in a monopoly position and results in a contract that is imbalanced in favor of the monopolist, and thus not conducive to overall order or fairness in the economy. For Hegel, in the sale of "the commonest necessities of life" such as wheat or corn, the "public" is in effect a single purchaser or buyer¹¹³ and so "double competition" does not exist. As a consequence, without governmental regulation the single purchaser can, when necessities are abundant, drive down the price by refusing to buy at all from those who do not sharply lower their prices. Conversely, when necessities are scarce, the single purchaser can be forced by the sellers to pay almost any price to obtain what it needs. In short, for Sir James Steuart and for Hegel, the lack of "double competition" in basic necessities means that governmental intervention is essential.

A second reason exists for Hegel's advocating intervention of public authority where Ricardo, for instance, does not: the person of abstract right, that unity of free will with natural needs and characteristics, when made concrete, is still a mixture of needs and will, of welfare and right, and so should have both his welfare and his right satisfied. Because for Hegel the system of needs or the economic market does not function smoothly and automatically, the public authority frequently has to intervene, either to remind men in the system of needs to recognize the rights of others (and not take their property by theft rather than contract) or to assure welfare. Whereas Ricardo does not suggest governmental intervention for trade dislocations, for the upsets resulting from the Napoleonic wars, or for deviations of the actual or market price of commodities from "their primary and natural price,"¹¹⁴ Hegel wishes to assure the welfare of those affected by such economic problems. Hegel also wishes to assure the welfare of those who have become impoverished by economic difficulties or the regular workings of the economic system. Whereas Ricardo stresses formal freedom to the general exclusion of welfare in economic society,¹¹⁵ Hegel stresses rights and formal freedom to the exclusion of welfare only in abstract right and sees that in civil society both welfare and rights must be recognized and realized.

A third reason Hegel favors public intervention is the ethical welfare of the members of civil society, especially the poor. Their rights must be upheld and their participation in the social benefits of civil society assured if they are to remain full and active members of their own *Sittlichkeit*. Hegel sees that their mental disposition bears impor-

¹¹³ *Philosophy of Right*, supra note 1, para. 236.

¹¹⁴ D. Ricardo, supra note 110, at 148.

¹¹⁵ Contemporary economic thinkers have continued and intensified Ricardo's tendency.

tantly on the functioning and legitimacy of the state itself, which exists mediately in the self-consciousness of its members.¹¹⁶ Because the economic order on its own does not produce (or even tend to produce) an equilibrium, especially not a full employment equilibrium, the public authorities must act where the economy falters.

The free use and alienation of property is also limited in corporations. Although not legally required, membership in a corporation is important for those in the business class. Owning "moveable" property or engaging in the "business of exchange," as do some businessmen, tends to make their relations with their fellow citizens abstract or dissociated.¹¹⁷ Through their membership in a corporation they can obtain stable recognition and respect for their contribution to civil society and a sense that they are "somebody" working valuably in the social order.¹¹⁸ Corporations require that individuals work together and that cooperation includes the duty of charity—as wealthy corporation members assist their fellow associates who are poor or impoverished—and the duty of self-imposed restrictions on maximizing income. "The so-called 'natural' right of exercising one's skill and thereby earning what there is to be earned is restricted within the Corporation only in so far as it is therein made rational instead of natural."¹¹⁹ In both cases, the corporation member loses the free use and alienation of his property, practices the virtues of liberality and rectitude in the place of (the person's) arbitrary will, and enters into long-term relations, not only discrete and transitory contracts.¹²⁰

VI. PROPERTY IN THE FAMILY

In his discussion of the family, which along with civil society and the state is one of the major institutions of *Sittlichkeit*, Hegel characterizes marriage and family as a small community based on love, and the participating individuals as family members, not as formal persons.¹²¹ He conceptualizes the human relations among family members not in terms of private property or free contract, but in terms relevant to his characterization of the family as an intimate and loving community. He redefines property, its use, and alienation.

¹¹⁶ Philosophy of Right, *supra* note 1, paras. 244, 257.

¹¹⁷ Compare Philosophy of Right, *supra* note 1, para. 204 (the "business class," through craftsmanship, manufacture, and trade, has the task of mediating one laborer's needs and work with those of others) with D. Ricardo, *supra* note 110, at 48-51 (asserting a "natural" value of wages from which temporary deviation is adjusted through competition).

¹¹⁸ Philosophy of Right, *supra* note 1, para. 253.

¹¹⁹ *Id.* para. 254.

¹²⁰ Macneil, *The Many Futures of Contract*, 47 S. Cal. L. Rev. 691 (1974).

¹²¹ Philosophy of Right, *supra* note 1, para. 158.

Hegel argues that marriage is not in essence a contract deriving from mutual alienation of property because it involves not "single external things" that can be alienated but rather each party's full personality, which no one can rightly alienate once he or she has claimed it, and in which no other person can rightly claim a property right. Hence, Hegel's vehement and famous complaint that "to subsume marriage under the concept of contract is thus quite impossible" and to talk of marriage as such a contract is "shameful."¹²² Rather, "though marriage begins in contract," including the free consents and inclinations of the partners, "it is precisely a contract to transcend the standpoint of contract," because both parties "consent to make themselves one person, to renounce their natural and individual personality to this unity of one with the other" and thereby find in this union "their liberation, because in it they attain their substantive self-consciousness" in a full and intimate community of "love, trust, and common sharing of their entire existence as individuals."¹²³ Because marriage cannot be conceptualized and interpreted in the terms and confines of Hegel's discussion of the abstract rights of property and contract,¹²⁴ it must be seen in other terms.

Marriage does not involve the assertion of personal rights by the two parties and cannot be a relation of property where one party owns the other, or of contract, about a "single external thing." Instead, marriage requires the surrender of separate personality by each and a relation of love; thus, the property of the marriage-partners should be viewed not as the private property (*Eigentum*)¹²⁵ of each, to be used and alienated by each separately according to the arbitrary will of each, as is property (*Eigentum*) in "Abstract Right." Rather, the property (*Eigentum*) of each becomes, with marriage, the resources

¹²² Id. para. 75R.

¹²³ Id. paras. 162, 162R, 163.

¹²⁴ Contemporary economic thinking continues to see marriage in terms of contract, and from Hegel's perspective continues to ignore love and individual development in marriage. For instance, for Posner, marriage contracts resemble other contracts: "a voluntary arrangement in which services are exchanged presumably to the mutual benefit of the parties." R. Posner, *supra* note 5, at 62. "[M]arriages not undertaken for mutual advantage create inefficiency." Id. at 63. Whether love can be defined as a "service" and can be commodified and calculated like any other economic good or service, these two points at least distinguish Posner and Hegel. For Hegel, in economic behavior, the person acts to maintain his independence and autonomy. In love, the "first moment" or aspect is "that I do not wish to be a self-subsistent and independent person and that, if I were, then I would feel defective and incomplete. The second moment is that I find myself in another" and gain completion and self-subsistence. Hegel thinks love is therefore "the most tremendous contradiction" and not susceptible to comprehension through standard modes of deductive logic. See *Philosophy of Right*, *supra* note 1, para. 158A.

¹²⁵ "*Eigentum*" is Hegel's technical term for "property" in "Abstract Right."

(*Vermögen*)¹²⁶ of both, and when children exist, of the family as a whole. And, as the family resources, *Vermögen* extend to include everything that can provide for the subsistence and enjoyment of the family, such as the particular (marketable) skills and labor of the father. The family resources are "common property so that, while no member of the family has property of his own [*qua* family member], each has his right to the common stock."¹²⁷ Based on a type of human relation unrelated to (and indeed excluded from) property-based relations, marriage involves a principle of property that is different from—indeed, as common property, contradictory to—the property of "Abstract Right."

Although the family resources are in principle shared, Hegel thinks that the administration of this wealth of the family must be given to one individual, the head of the family. His administration should follow the principles of shared resources but, as Hegel notes, since the family is based on feeling and the laws cannot effectively regulate within the family, no legal assurances can exist that the father will administer as he should.¹²⁸ Hegel imports directly from "Abstract Right" the notion that property has a single administrator, who can always dispose of it by his arbitrary will, even if he ought not. Or, in different terms, the ethical principle of family resources is not backed up by legal enforcement. The law regards the family resources as the private property of the father. Hegel's strong disapproval of wills that break the ethical principle¹²⁹ suggests that he saw the issue of family resources as one where, although an important ethical distinction needed to be made (namely, *Vermögen*, not *Eigentum*), the law, nevertheless, could not be brought in to enforce the distinction. Hegel must remain content to characterize the family as necessarily at the level of contingency.

Hegel's discussion of children derives from distinctions about property that he already made in "Abstract Right." There, he sharply distinguishes between property in a thing and property in one's self, so that the latter property is different from the paradigmatic case of property in things because property in one's self always requires that others recognize it (even when it does not exist) and

¹²⁶ "*Vermögen*," translated by Knox as "capital" and by me as "resources" (partly to avoid any ambiguity with capitalist capital), is different from *Eigentum*. "It is not merely property [*Eigentum*] which a family possesses; as a universal and enduring person, it requires possessions specifically determined as permanent and secure, i.e. it requires *Vermögen*," resources. *Philosophy of Right*, supra note 1, para. 170.

¹²⁷ Id. para. 171.

¹²⁸ Id. paras. 171, 179, 179R, 180R.

¹²⁹ Id. paras. 179R, 180R, 180A.

because it is inalienable. Consequently, children, as future adults, "are potentially free and their life directly embodies nothing save potential freedom."¹³⁰ Consequently, they are not things [*Sachen*] and cannot be the property either of their parents or others,¹³¹ such as the state. Their parents are charged with educating them into the principles of ethical life, "raising" them out of their natural instinctive level, and disciplining them to correct and educate them so that they can attain "self-subsistence and freedom of personality."¹³² The parents' role of educating their children is not, however, to enforce retribution, as is the purpose of the legalistic punishment of abstract right and the administration of justice. Such purpose is not appropriate to the non-property-based, feeling community of the family.¹³³

For Hegel, then, the principles and practices of abstract right find little scope in the community of the family. Marriage is not about single external things and so not essentially a contract. The upbringing of the children is not a matter of single external things either, and so not a property relation. Since the family is characterized as a community, its property is transformed to communal resources. The only remnants of abstract right are the bride's and groom's free consent and the father's administration of the family resources, where he can exercise his arbitrary will—but ethically should not.

¹³⁰ Id. para. 175.

¹³¹ Id. "*Sache*" is Hegel's technical term for "thing" in "Abstract Right." Only *Sachen* can be claimed as property and exchanged in contract. Id. paras. 42, 75.

¹³² Id. paras. 174-75.

¹³³ Hegel's conceptualization of the family allows him to conceptualize clearly the status of children and their treatment as potential adults. Economistic thinking, perhaps because of its lack of concern with individual development or because it takes voluntariness (*Willkür*) as the full definition of freedom or free will, has difficulty treating children. See Baker, *supra* note 90, at 773; Stillman, *supra* note 90, at 77-93. For instance, when Posner considers children in cases of divorce, he notes two standard economistic ways of thinking about children: that the parents can be depended on to represent the children's interests and that children should be regarded as the property of their parents. He rightly rejects both, the first on sound empirical observation, the second on oddly uneconomistic, unempirical grounds: "the view of children as chattels does not accord with modern sensibilities." R. Posner, *supra* note 5, at 64. These "modern sensibilities" justify extensive "interventions in market processes" to protect the welfare of children. Note that Posner does not have an economistic way of conceptualizing children. Note too, as Hegel would have noted, that Posner's formal (and, for Hegel, abstract) thinking, when faced with a dilemma insoluble on its own terms, seems perfectly willing to appeal to some (unrigorously derived) empirical content, such as "modern sensibilities," an empirical content that it would be entirely unwilling to appeal to in other circumstances, i.e., if the issue were the welfare of workers subject to being fired at will by management or laid off suddenly in plant closings.

VII. PROPERTY IN THE STATE

Like the family, the state is not a sphere of social life where the full use and alienation of property and free contract predominate. Like marriage, the state cannot be conceptualized as property or contract, because the state does not own its citizens and because individuals do not own or alienate "single external things" when they grow up to become members of a state. Rather, like the family, the state is a living community of which the citizens are parts; a community whose norms, ideals, and modes of action shape the citizens' habits, knowledge, activity, and goals—their personality or individuality.¹³⁴ Similarly, the purpose of the state is not the security and protection of property and personal freedom, or of life, liberty, and estates. The state does not exist as the means by which to assure property, which is assured by the system of needs and the administration of justice. Indeed, the state—whether Lockean, Kantian, Rawlsian, or Hegelian—sometimes finds itself compelled (by taxes and war) to take citizens' property, liberties, and lives.

Hegel asserts and assumes the state's right and power to tax.¹³⁵ He does not condition such a power on any particular requisite, such as representation, nor does he see taxes as a gift by citizens to state or as a *quid pro quo* (for example, for protection from others). Ultimately, I think, taxes are for Hegel legitimate claims made by the state for its own purposes and maintenance.¹³⁶ These state claims are made on a percentage of the property (regardless of wealth, income, or expenditures) of the citizens, and, in terms of Hegel's treatment of private property, that amount is citizens' property that cannot be freely marked, used, or alienated but is properly available to the state.

Abstract rights and the freedoms of choice and particularities that derive from them do, however, enter the state because of the form (taxes) in which the state exacts services from the citizen. The modern state sets taxes not in terms of personal services but in terms of money. Monetary taxes are consistent with the formal equality of abstract right: "[o]nly by being translated into terms of this extreme culmination of externality can services exacted by the state be fixed quantitatively and so justly and equitably."¹³⁷ Monetary taxes are also consistent with free choice—the arbitrary will of abstract right. When the state requires particular services, for example, five weeks of *corvée* labor or building roads, then the citizen's activity is set by the

¹³⁴ *Philosophy of Right*, *supra* note 1, para. 257.

¹³⁵ *Id.* para. 299.

¹³⁶ *Enzyklopädie*, *supra* note 1, § 544R.

¹³⁷ *Philosophy of Right*, *supra* note 1, para 299R.

state, regardless of the citizen's choice. When the state exacts monetary taxes, then the individual can choose how to earn the money to pay the tax, so that his taxpaying is "mediated through his own arbitrary will" and his "subjective freedom" is respected.¹³⁸

Hegel also asserts the state's right to call on its citizens in case of war, which puts at risk their lives and properties—the sole remaining exaction of services that is personal, not monetary. "War is the state of affairs which deals in earnest with the vanity of temporal goods and concerns—a vanity at other times a common theme of edifying sermonizing."¹³⁹ The individual citizen's duty is to uphold "the independence and sovereignty of the state, at the risk and the sacrifice of property and life, as well as of opinion and everything else naturally comprised in the compass of life."¹⁴⁰

In his discussion of the major powers of the state—the monarch, executive, and legislative—Hegel does not assimilate any political relation to his abstract right statements of freely usable and alienable property in things. State positions cannot be private property, much less alienable private property. In the lower house of the legislature, Hegel minimizes any direct or formal role for private property. The legislators gain their seats by election, not by purchase, and retain them by reelection, not property right.¹⁴¹ They are enjoined by Hegel to "vindicate the universal interest, not the particular interest of a society or Corporation in preference to that interest."¹⁴² They are elected by vote of members in a corporation; no formal property qualification determines who votes. Hegel finds any state-wide system of property requirements as external to and abstract from the core issue, political competence, although each corporation may well impose its own minimal standards of property and earnings on prospective members.¹⁴³

In the executive and the army, Hegel also minimizes the scope for private property. Members of the executive and the army do not hold their offices as private property. "[T]he work imposed on [a civil servant] and entrusted to him is not merely a particular thing, external in character. . . . The work of a civil servant . . . is as such a value in and of itself," the work of furthering the rational and universal that the state embodies.¹⁴⁴ Public offices are not to be regarded as a "sin-

¹³⁸ Id. paras. 299, 299R.

¹³⁹ Id. para. 324R.

¹⁴⁰ Id. para. 324.

¹⁴¹ Id. para. 308.

¹⁴² Id. para. 309.

¹⁴³ Id. paras. 310R, 255R.

¹⁴⁴ Id. paras. 277A, 294R.

gle external thing" but as requiring a commitment to the core values of the state. They cannot become private property, as was the case under feudalism (and, as Hegel carps, in the contemporary English army) but must be open to those who have the needed "ability, skill, [and] character."¹⁴⁵ Political knowledge and competence, not money and saleability, determine office holders in the executive; military competence and courage determine them in the army. In other words, in the face of what the state requires, private property in offices—regarding governmental offices as single external things that can be alienated and appropriated—must give way.

For the members of the upper house and, by implication, the monarch himself, private property, as alienable private property, must give way—it becomes inalienable wealth. Inalienable property in land for aristocracy and monarch is required, Hegel thinks, by the political needs of the state. In the case of the upper house, the mediations (the communications, convincings, and compromises) among the three powers of government require an upper house whose members' wills are independent—especially independent of the results of state activity—of the imperious demands and fluctuations of civil society, and of election campaigns.¹⁴⁶ Hegel finds such "independence" in the large landowners or landed aristocracy. To assure their politically necessary independence and service, he insists that "their wealth becomes inalienable, entailed, and burdened by primogeniture."¹⁴⁷ Similarly, Hegel's hereditary constitutional monarch—whose independent "I will" is so essential to the modern state that has actualized subjective freedom—has his politically necessary independence and service assured because his family's wealth is not freely alienable.¹⁴⁸

Throughout the state as throughout the family, then, the practices and principles of abstract right are transformed to fulfill the requirements of the political community. The state is not about single external things and so not a contract; the relations of state offices and officers to each other and to the citizens are neither contractual nor relations of ownership. Private property is redefined and transformed to meet the requisites of the political order. About the only remnant of abstract rights is the formal freedom of taxation. Otherwise, the personal rights of abstract rights, actualized in the system of needs and the administration of justice, are subordinated to the demands of proper political order and action.

¹⁴⁵ Id. para 277A.

¹⁴⁶ Id. paras. 305-07.

¹⁴⁷ Id. para. 306.

¹⁴⁸ Id. paras. 279-81.

VIII. PROPERTY, PERSONALITY, AND *SITTlichkeit* IN HEGEL'S THOUGHT

In opening stages of his discussion of property in "Abstract Right," Hegel presents what seems to be an extensive, comprehensive, and powerful statement of the person's right to property. Property seems as influential for Hegel as for many other modern political philosophers, since the right to property is bound up with freedom, personal equality, and the human control of nature. Indeed, at the beginning of his presentation, property seems in Hegel's thought to take on a role more determining than in many other modern political philosophies, because for Hegel, the person's rights to life and liberty derive from (or are modes of the exercise of) his right to property—private property and possessive individualism at their most extreme.

But what appears true for the first few paragraphs in Hegel's presentation of property does not hold true at the end of the *Philosophy of Right*, or even in many cases at the end of "Abstract Right" or the section on "Property." Hegel does start with a broad and powerful definition of property, but he does so because he thinks that the distinctions and limitations within property and contract will then become clear—made translucent by his logic, his attention to relevant contextual considerations, and his awareness of the theoretical issues that have surrounded past discussions of property and that would surround post-1821 discussions.

Generally, what allows and requires Hegel to limit the scope of paradigmatic private property (the will in the thing, full and complete, with free use, alienation, and contract) and to introduce other forms of owning are three concerns. First is his sense that property, primary in logical order, is therefore primitive and less developed than later attitudes and institutions in contributing to mature human freedom.¹⁴⁹ Second is his idea of the person as dynamic and developmental, acting in and learning from the world.¹⁵⁰ Third is the careful, logical, and contextual distinctions Hegel draws in his analysis, especially of alienation and contract abstract right,¹⁵¹ and the attention to circumstances (of things, individuals, and institutions) throughout all of ethical life.¹⁵² Here, Hegel focuses on the matters that are the media of human relations for different institutions of *Sittlichkeit*; the social roles that the individuals play in the different institutional settings, the demands and purposes of the institutions themselves, and

¹⁴⁹ See supra notes 32-37 and accompanying text.

¹⁵⁰ See supra notes 38-41 and accompanying text.

¹⁵¹ See supra notes 42-61 and accompanying text.

¹⁵² See supra notes 62-149 and accompanying text.

the relation between individual and institution—between what is required for the full development of individuals and the rational ordering of institutions.

Because of his first concern, the primitiveness of property, contract, and abstract right generally, Hegel does not wish to impose images, metaphors, or models of private property and free contract throughout all social life. Nor does he wish to follow economic theorists in asserting, without much argument or context, that free alienating and contracting are always desirable. Nor does he follow out the implications in Locke, for instance, that because (abstracted) man in the state of nature relates through property, free alienation, and contract, fully developed and social man can or should relate through them.¹⁵³ Rather—because of his second concern, about the dynamic and development character of individuality—at the same time that Hegel sees private property as essential to the development of individual personality and rational institutions, he also sees that abstract right is limited in its contribution to such development and that nonproperty- and noncontract-based modes of personality development and rational institutions exist and are necessary to a full individuality and to a full political rationality.

Hegel's third concern—his care, in "Abstract Right," in defining property clearly and in discussing the distinctions of use and alienation, as well as his attention to the specific characteristics and goals of different social structures—allows him to differentiate among types of relations between human beings and nonhuman objects. Or in plain language, the third concern allows him to differentiate among types of property. When combined with his first concern, the primitiveness of full and complete private property, the result is that in the major institutions of *Sittlichkeit*, only the system of needs and the administration of justice directly actualize private property; in civil society, public authority and corporations limit private property; and the crucial institutions of family and state contain very little of private property and free contract. As the person is transformed into a member of a community, property is transformed into community resources and contract is replaced by different forms of obligation.

Hegel's three concerns, taken together, indicate how he can begin his presentation of his political philosophy with a single person in a presocial condition. From that start, Hegel can derive free and complete private property, and then—because of property's relative primitiveness and because of the logical distinctions (in the subsection on

¹⁵³ See Radin, *supra* note 49, at 1877-87; see also *supra* note 52 (definition of "economic").

"Property" especially) and the contextual distinctions in ethical life—end up with social structures in ethical life some of which concretize and embody abstract property fully and others of which modify it or are based on altogether different foundations from property and contract.

Similarly, Hegel's three concerns, taken together, indicate how he can begin his political philosophy with the right to property, have the individual claim his life and liberty as inalienable property, and yet claim things as alienable property; and how he can link property and personality, show the limits of the linkage, and construct the non-property-based institutions which continue the *Bildung* of personality or individuality, begun in property and still requiring private property. The dynamic and developmental character of personality both requires and is limited by property;¹⁵⁴ and the transcending of property is built on the existence, in *Sittlichkeit*, of social structures some of which concretize abstract right, others of which do so partially, and still others of which manifest completely different principles. For Hegel, individual development and *Bildung* require that the individual be involved in a variety of institutions that allow more or less scope for the arbitrary will of property and for the universal will of community. The coincidence or concrete unity of individual and *Sittlichkeit* requires that individual *Bildung* develop to the level of universality; and the state, to be a logical and experiential unity, requires a variety of social structures that both encourage individual *Bildung* and produce institutional coherence.

IX. HEGEL'S IDEAS OF PROPERTY, PERSONALITY, AND *SITTlichkeit* TODAY

Hegel's treatment of property also has implications for theories of property and society. Most important, perhaps, (and unlike many other modern political philosophers and economists who aim to interpret and enclose as many dimensions of human life in terms of individual private property with free and full use, alienation, and contract) Hegel's treatment serves to open, not to close, the question of the scope of application in society of the practices and principles of abstract right, formal freedom, and arbitrary free choice. In what types of social structures and individual interactions should private property and free contract be given full scope, and in what kinds of social structures and individual interactions should property (that may be fully usable and alienable in the system of needs or the econo-

¹⁵⁴ See *supra* notes 23-31 and accompanying text.

mists' marketplace) be limited or replaced by norms and goals not based on property, contract, or abstract right?

Moreover, Hegel's treatment suggests certain criteria that may be called into play to decide whether the norms and goals of private property should predominate or should give way. Property norms seem more likely to be valid—or to have a good argument for being valid—the more that the issue under consideration can be treated as a "single external thing," and thus freely alienable. Conversely, when the issue is not definable in terms of a "single external thing," then free and complete private property seems likely to be less relevant and less legitimate. Property norms seem more likely to be valid when the actors are single independent concrete persons not in any long-term relations with each other. The more that the relation takes on the characteristics of a community, the less it seems appropriate to regulation and determination by the norms of free alienation and private property.

Finally, Hegel's treatment leads to two definite conclusions. One is that personal rights and freedoms cannot be alienable—free will is constitutive of personality, not merely an inessential attribute, and so cannot be alienated by the person nor appropriated by another. The second is that any rational modern political order requires some scope both for actualized abstract rights and for social practices not based on abstract rights. Private property—the first rights of the person—does need to have some definite scope in social life, so that those essential rights can be actualized. But the scope today need not be identical with Hegel's own system of needs. Those who wish to modify the scope might note that Hegel does not justify capital separately from property and that the public authority's duties can lead it to extensive intervention and cannot be limited by a clear, sharp, or bright line.¹⁵⁵ Equally with private property, however, welfare—the satisfaction of needs and participation in civil society—requires realization. Moreover, human development—individual *Bildung*—necessarily requires that there be some scope in social life where the norms and practices of abstract right do not predominate. Consequently, when a lawyer or a politician analyzes a social practice to determine whether it should be considered as property-based, then property rules (or liability rules) should not be considered as the presumptive standard and all other instances as exceptions. Again, Hegel's treatment serves to open the issue and to suggest the alternatives.¹⁵⁶

¹⁵⁵ Philosophy of Right, *supra* note 1, para. 239.

¹⁵⁶ The determination is particularly difficult, from Hegel's perspective, when the dilemma involves crossing social structures. For example, when a family—an intimate community with

About some specific social issues, such as the family, Hegel's insights are relevant to the present. Except for his giving trusteeship (and hence ultimate choice of disposal) to the father of the family, Hegel suggests insightful understandings of certain relations in the family. First, children are not property but rather are potential adults who are to be educated to maturity and freedom, and every action taken toward a minor by a parent, public administrator, or the state must have those goals in mind. In most contemporary thought, of course, children are not property either in the literal and extensive Roman law sense or in any other significant sense. Certainly, children should not be the property of the parents in the sense that a parent can do with his child as he wishes. Nor are children to be seen as automatically the property of (or under the charge of) the mother (or, as it was in nineteenth-century Britain, the father) in divorce proceedings. Finally, of course, children are not the property of (or under the detailed control of) the state. Conversely, children are not adults with full rights because they do not yet will and possess themselves as their own inalienable property. They need to be brought up to be able effectively to do so, although the state by positive law and others will recognize them as adults at some society-wide age of majority (such as twenty-one).¹⁵⁷ Although they cannot claim the rights of adults, they can claim "the right to maintenance and education at the expense of the family's common" resources.¹⁵⁸

Because Hegel emphasizes that marriage is not a property-like contract, but rather an intimate community, he concurrently sees that divorce cannot be conceptualized as a (discrete) contract. Marriage breakdown occurs not because the partners disagree about "single external things" (although, of course, lots of disagreements are phrased in terms of such specifics), but because the parties' "dispositions and actions have become hostile and contrary."¹⁵⁹ Such problems of disposition are not susceptible to "legal or positive bond" and contractual remedies, such as assessing monetary damages or requiring specific performance, seem hardly efficacious. Love, as the sacrifice of personality, cannot be compelled. On the other hand, Hegel did not regard the waning or breakdown of love alone as sufficient to warrant

all that implies about the downgrading of the claims of arbitrary free contract—confronts a commercial landlord whose own concerns, values, and locus of action are in the economic marketplace, the system of needs, it is not clear that the market should always predominate. See Radin, *supra* note 10.

¹⁵⁷ See *supra* notes 41 and 133 (difficulties of economic thinkers with conceptualizing when an individual's will is mature).

¹⁵⁸ *Philosophy of Right*, *supra* note 1, para. 174.

¹⁵⁹ *Id.* para. 176.

divorce, because for him the family as an ethical institution needed to be upheld, especially against the transitoriness of feeling, the caprice of passion, and other romantic and subjective shibboleths. So, in the midst of an intelligent conceptualization of marriage breakdown—one not open to rigorously property-based theorists—Hegel also opens the question of the relation between the parties' wishes and the requisites of the broader social interactions of which the parties are parts.

Hegel also emphasizes that the family property is communal, to which all contribute and from which all have a right to draw. Hegel's argument about communal property seems strong. Because marriage is an intimate community in which each surrenders separate personality in love and attains self-consciousness in mutual recognition, each party's property, like each party's personality, should be surrendered to the whole, and each should be able to draw on the communal property to fulfill the goals of the institution. Regardless of what might be Hegel's own position in 1821 on how property should be divided in cases of divorce, and despite his giving the husband control over the property during the marriage and in making a will, Hegel's argument about communal property implies that in cases of divorce communal property should be exactly that—communal—and not subjected to analyses that try to determine whose private property it is. It should be divided in terms of the separate needs of each member of the (former) community, not as the private property of whichever parent's name it is in. Interestingly, because Hegel seems to include "skills" in the family's "resources,"¹⁶⁰ the *Philosophy of Right* can be found to include, for example, an M.D. degree earned during marriage as part of the family's resources—even though Hegel himself would probably never have dreamed of such a thing!

In terms of the institutions of civil society, Hegel does emphasize that there should be some sphere of life that actualizes abstract right, in which concrete persons are able freely to choose, to determine how they wish to live their lives within the confines set by market structures and other social institutions. Equally, rights need to be embodied in an administration of justice. In his discussion of the public authorities, Hegel thinks that the free market does not work smoothly to satisfy needs and that police intervention is necessary, even if it means limiting the use and alienation of property. To some extent, Hegel is trying to limit the "poverty and distress" that may derive from the external workings of the market or from chance events at home or abroad. He is willing to override explicit contracts to mitigate the suffering and exclusion from social interactions that pure

¹⁶⁰ Id. paras. 177, 200.

market forces, impersonal and objective, would allow, and he wishes to lessen the suffering caused by unpredictable upsets at home or abroad. Human welfare, in other words, can override property or contract—but can do so, for Hegel, in part only because the abstract (and concrete) person is a mixture of both needs and rights, welfare and liberty, both of which must be realized.¹⁶¹

The public authorities have another rule, tied less directly to material need and more to attitudes and actions. Hegel notes that individuals do not freely choose membership in civil society:

Civil society tears the individual from his family ties, estranges the members of the family from one another, and recognizes them as self-subsistent persons Thus the individual becomes a son of civil society which has as many claims upon him as he has rights against it. . . . [A]gainst nature man can claim no right, but once society is established, poverty immediately takes the form of a wrong done to one class by another.¹⁶²

So the public authority has a responsibility to each of the “sons” of civil society—for their subsistence, education, and general moral and ethical attitudes. If there is a “rabble of paupers,” the problem is not that the poor are naturally lazy individuals; rather, a major part of the problem is that the structure of society allows or generates such poverty and the consequent feelings of alienation, shame, and loss of self-respect, that is, the culture of poverty.

Three further points, whose exploration would take this Article too far afield, are worth mention. Two relate to the state. First is the treatment of taxes, not so much as a levy on an individual's private property but as a portion of that property that the state can rightly claim as its property. Second is the noncontractual idea of political obligation, where citizens are obligated to follow the government because they perceive an identity between their goals and the state's goals, not because the state is a means to their private ends, such as the maintenance of their lives, liberties, and estates. The third relates to corporation membership. Corporations encourage long-term relational contracts among their members and, as Hegel implies, by making the corporation one of the two “ethical roots of the state,”¹⁶³ long-term relational contracts are probably best understood (by both the contracting parties and political analysts) as very different from abstract contracts because they are about single external things, and are made between two persons who recognize each other as persons but

¹⁶¹ Id. para. 35.

¹⁶² Id. paras. 238, 244A.

¹⁶³ Id. para. 255.

otherwise need have no interaction.¹⁶⁴ Long-term relational contracts generate in the parties ongoing relations, shared concerns, and even senses of obligation or duty to the other. Therefore, they tend away from the model of the marketplace as the "war of all against all" and toward a model of an informal community.

Finally, it may be that on the issues surrounding property, personality, freedom, and social life, one of Hegel's main points for contemporary legal and political thought is to force attention to the specific definitions and implications of property and contract. From these specifics, it is necessary to think about how private property and free contract generate or ignore the various dimensions of freedom and *Bildung* (or maturity) that human beings need, and to consider that different social practices, interactions, and norms may or may not be significantly constituted by rights of property and contract. By thinking with Hegel about the rights to property, life, and liberty, we can see that private property and the transcending of it are both required for a developed individuality and a rich social and political order.

¹⁶⁴ See Macneil, *supra* note 9; Macneil, *supra* note 120.

ANNULMENT RETRIBUTIVISM:

A Hegelian Theory of Punishment

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I. INTRODUCTION

Despite the bad press that retributivism often receives, the basic assumptions on which this theory of punishment rests are generally regarded as being attractive and compelling. First of these is the assumption that persons are morally responsible agents and that social practices, such as criminal punishment, must acknowledge that fact. Additionally, retributivism is committed to the claim that punishment must be proportionate to the crime, and not determined by such utilitarian concerns as the welfare of society, or the hope of deterring other criminals.¹ Because the most commonly discussed version of retributivism is developed from Kant's moral and legal theory, I will refer to it as *Kantian Retributivism*.² Despite its appeal, Kantian Retributivism cannot provide a satisfactory response to a kind of case that is receiving increasingly serious consideration in philosophical literature. The case is this: Many crimes are committed by individuals profoundly disadvantaged by unjust social institutions, such as racism, clas-

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1. Jeffrie Murphy writes, "Even many people who do not like the *name* 'retributivist' are persuaded by considerations that are clearly retributive in nature. Suppose it was suggested that we punish negligent vehicular homicide with life imprisonment and first degree murder with a couple of years in jail, and suppose this suggestion was justified with the following utilitarian reason: Conduct of the first sort is much more common and dangerous than conduct of the latter sort (we are much more likely to be killed by a negligent driver than by someone who kills us with the primary object of killing us), and thus we should use the most severe deterrents against those who are genuinely dangerous. If we object to this suggestion, as most of us would want to, that this would be unjust or unfair because it would not be apportioning punishment to fault or desert, we should be making a retributive argument. Thus even if the label 'retributivist' repels most people, many of the actual doctrines of the theory do not." Jeffrie Murphy, *RETRIBUTION, JUSTICE, AND THERAPY* 230 (1979).

2. This interpretation of Kant's theory of punishment has been developed by Herbert Morris, *Persons and Punishment*, 52 *MONIST* 475 (1968), and Murphy, *supra* note 1.

sism, and/or sexism. If such individuals commit crimes, the retributivist is placed in a very difficult position: *Either* she must claim that the individual has willfully committed a crime and for that reason deserves punishment, seeming to ignore entirely the social background of the individual, *or* she can claim that the individual—in virtue of being disadvantaged by social injustices(s)—does not deserve punishment because such punishment would be unfair.³ I have argued elsewhere that neither strategy is tenable.⁴ The first simply refuses to take seriously the important political intuition that designing punitive practices regardless of social injustices is irresponsible and unjustifiable. The second, although initially compelling, is not an option because, put briefly, Kantian retributivistic punishment is a function of the wrongdoer's will entirely, not a function (wholly or partly) of the social context in which the wrongdoer finds himself. Thus, it is not an option for a Kantian retributivist to "build into" the criminal's will his social background as a means to determine the punishment he deserves. Because of the uncomfortable situation these cases create for Kantian Retributivism, many conclude that retributivism is compelling "in theory" only, and endorse (perhaps unhappily) utilitarian theories of punishment "in practice."⁵ However, I believe that abandoning retributivism in the face of these cases is premature. I will argue that what we need is a different *version* of retributivism, one that allows us to remain committed to the moral claims that persons should be held responsible for their freely willed actions and that punishment should be proportionate to their willfully committed wrongs, and at the same time allows us to take seriously our political intuition that a responsible institution of punishment acknowledges the social injustices that seriously disadvantage many individuals in our society.

The theory of retributivism that I will be developing in this article does not come from Kant's (or Kantian) moral theory, but instead from Hegel's political theory. There is little literature on Hegel's theory of punishment, and much of what has been written about it is either dismissive or flawed (and often both).⁶

3. Murphy comes to the conclusion that the punishment of such individuals is unfair and, therefore, unwarranted. See Jeffrie Murphy, *Marxism and Retribution*, in Murphy, *supra* note 1, at 93–114.

4. See Jami L. Anderson, *Reciprocity as a Justification for Retributivism*, 16 CRIM. JUST. ETHICS 13–25 (1997).

5. Social injustices such as classism or racism create no analogous problems for utilitarian theories of punishment: If punishing individuals burdened by unjust social institutions produces more harm than good, or if punishing them as severely as we would punish individuals who are not likewise burdened by social injustices produces more harm than good, then the utilitarian would claim that punishment is unwarranted—clearly the answer many are hoping to hear from the retributivist.

6. J.E. McTaggart lamented how little support Hegel's theory of punishment receives from the philosophical community. He writes, "It is not impossible that we may find out that the world has been acting on the Hegelian view for many ages, but as an explicit theory it has found little support." J.E. McTaggart, *Hegel's Theory of Punishment*, 6 INT'L J. ETHICS 482–99 (1896). Peter Steinberger made a similar observation nearly 100 years later. See Peter Steinberger, LOGIC AND POLITICS ch. 3 n.1 (1988).

Hegel claims that punishment is justified because it annuls crimes, thereby revealing the criminal act for what it is—a will “null and void.” Many philosophers regard the idea of annulling crime as extremely dubious, if not ridiculous. However, I believe that many criticisms of Hegel’s notion of “annulment” rest on serious misconceptions. After presenting an analysis of the notion of annulment, I will argue that Hegel has provided not only a compelling account of retribution, but also the theoretical machinery to address satisfactorily the “hard cases” that trouble Kantian Retributivism. Because Hegel’s theory of punishment differs from Kantian Retributivism, I will refer to it as *Annulment Retributivism*.

II. KANTIAN RETRIBUTIVISM AND “ROTTEN SOCIAL BACKGROUND”

In this section I outline the essential assumptions of the Kantian retributive theory of punishment in order to set up my conclusion that, despite the initial appeal of Kantian Retributivism, cases in which the criminal has been disadvantaged by social injustices raise irresolvable problems for this version of retributivism.

Kantian Retributivism is often described as being “backward looking” because, rather than justify punishment by appealing to the future effects of punishment (as “forward looking” utilitarian theories of punishment do), it justifies punishment by appealing to the wrongful act freely committed in the past. Such a justification reveals two primary assumptions of Kantian Retributivism:

R1: Persons are autonomous agents capable of free action.

R2: A crime is a freely committed wrong that unfairly advantages the criminal.

These two assumptions create the foundation for three secondary claims of retributivism:

R3: The punishment must be proportionate to—it must “fit”—the crime.

R4: Punishment is morally permissible.

R5: Punishment is obligatory.⁷

7. Some separate theories of retributivism into two categories: those that follow in the Kantian (and Hegelian) tradition of insisting that retributive punishment is not only permissible, it is also obligatory, and those that break from Kantian tradition and claim that retributive punishment is permissible, but not obligatory. H.L.A. Hart is one notable example of someone who makes this distinction. See PUNISHMENT AND RESPONSIBILITY 231–37 (1963). I believe that abandoning the claim that punishment is obligatory is motivated by the desire to make the theory more appealing to those who are ambivalent about retribution. However, I do not think that such a move is successful; in fact, given that the theory of retribution rests on the claims that we are morally obligated to treat persons as autonomous agents and that retribution is how we treat a criminal with respect, I do not see how it could *not* be obligatory to punish (retributively) criminals. But the

After explaining why the retributivist sees R3–R5 as developments of R1 and R2, I will address the problem social injustices create for Kantian Retributivism.

To begin, let us look at a famous passage in which Kant discusses retributive punishment:

Punishment by a court—this is distinct from natural punishment, in which vice punishes itself and which the legislator does not take into account—can never be inflicted merely as a means to promote some other good for the criminal himself or for civil society. It must always be inflicted upon him only because he has committed a crime. For a man can never be treated merely as a means to the purposes of another or be put among the objects of rights to things: His innate personality protects him from this, even though he can be condemned to lose his civil personality. He must previously have been found punishable before any thought can be given to drawing from his punishment something of use for himself or his fellow citizens. The principle of punishment is a categorical imperative, and woe to him who crawls through the windings of eudaemonism in order to discover something that releases the criminal from punishment or even reduces its amount by the advantages it promises. . . . For if justice goes, there is no longer any value in men's living on the earth. . . . But what kind and what amount of punishment is it that public justice makes its principle and measure? None other than the principle of equality (in the position of the needle on the scale of justice), to incline no more to one side than to the other. Accordingly, whatever undeserved evil you inflict upon another within the people, that you inflict upon yourself. If you insult him, you insult yourself; if you steal from him you steal from yourself; if you strike him, you strike yourself; if you kill him, you kill yourself.⁸

There is much packed into this passage, and it is worth unpacking because it will give us a good sense of what Kantian Retributivism is. First, we see a complete rejection of a utilitarian justification of punishment. Such a justification is misguided because it relies on a false conception of persons. It assumes that persons are unfree—are, in fact, not persons—and ought to be treated like animals and controlled with threats of harm for the purposes of another. To a retributivist, threats of punishment are as morally objectionable as the crimes they are intended to prevent. Punishment cannot be justified as an attempt to cure the criminal, to improve her morally, or to inflict injury on her with an eye to preventing future crimes. Nor are we free to inflict injury on the criminal for the purpose of bringing satisfaction to the victim or society. To undertake any of these goals is to cease to act in a manner consistent with R1, which requires that we treat persons as moral agents deserving respect. If persons are autonomous moral agents, then

development of that argument would take us too far afield of the purposes of this paper. For present purposes, because this paper focuses on Kantian Retributivism and Hegel's Annulment Retributivism—both of which are committed to the claim that punishment is obligatory—I will regard that claim as an important feature of retributivism.

8. Immanuel Kant, *THE METAPHYSICS OF MORALS* 140–41 (Mary Gregor trans., 1991), emphasis deleted.

crimes are a reflection of a willful deliberation, not merely illicit harms resulting from undeliberated drives or emotions. Nor are crimes signs of a need for therapy, a "bad attitude," or of recalcitrance. For the Kantian retributivist, even the fact that an individual willfully commits a particular kind of crime *repeatedly* is not, by itself, an indication that the crimes were acts of compulsion or that the criminal is incorrigible.

In rejecting a utilitarian justification for punishment, Kant is making a distinction between being punished and having harm inflicted on one for the sake of one's own good or for the good of others. To a utilitarian, there is no distinction—to be punished simply is to be inflicted with injury for the sake of a future good.⁹ But clearly Kant means something entirely different by 'punishment': For him, to be punished is to receive state-inflicted injury in a manner that is compatible with being treated as a person deserving dignity and respect. How can that be possible? If we reject all utilitarian criteria for apportioning punishment, then punishment must be determined in a manner that acknowledges the moral worth of the criminal and the moral significance of the crime. We do that by punishing in a manner that "equals" the crime. This entails R3, the claim that a punishment must be proportionate to what the criminal has done to another.¹⁰ If a crime unfairly advantages the criminal (R2), then that imbalance is rectified only when that advantage is removed and the criminal made an equal again. In this way we can ensure that punishment is not primarily an injury that serves another's purposes, but is, instead, a direct reflection of what the criminal has freely done to another. In freely committing a crime, the criminal has chosen to pursue his interests at the cost of other persons. Punishment rights this wrong. R4, the claim that retributive punishment is morally permissible, also follows from R1 and R2. Because the criminal's punishment is a recognition of his freely willed action, he cannot object that punishing him is morally wrong. Punishment is, for the retributivist, a means to honor a person as a *person*. Herbert Morris argues that because retributive punishment is reserved for persons, we ought to view it as a reaffirmation of our capacity to will as free agents, as beings with intrinsic value. An effort to eliminate retribution is an effort to eliminate our means to respond to the wrongs committed by persons *as wrongs*, and not as mere harms.¹¹ Finally, from R1 and R2, the retributivist draws R5, the claim that

9. Bentham's theory of punishment serves well as an example of a paradigmatically utilitarian theory of punishment. He writes, "[A]ll punishment is mischief: all punishment in itself is evil." For Bentham, no punishment is ever justified in itself; the only morally acceptable reason for punishing a person is to promote happiness or to prevent greater harms. Jeremy Bentham, *PRINCIPLES OF MORALS AND LEGISLATION* ch. 13 sec. 2 (1781/1988).

10. A common criticism of the claim that the punishment must fit the crime is that it requires that we rape the rapist, torture the torturer, and so on. Murphy quite rightly points out that Kant is not committed to a literal reading of this passage; rather, all that he is committed to is the not implausible idea that a crime is a "debt" the criminal owes society and that she pays off that debt when she has made a payment (via punishment) that is proportionate to what she owes. See Jeffrie Murphy, *KANT: THE PHILOSOPHY OF RIGHT* 143 (1970).

11. See Herbert Morris, *Persons and Punishment*, in *ON GUILT AND INNOCENCE* 31–59 (1976).

because punishment gives a criminal what he deserves (and because we are obligated to give others what they deserve), punishment is obligatory. We are not obligated to control all potentially harmful animals, children, or other non-autonomous individuals since there may be occasions in which it is simply too costly to control or deter their actions. However, to refuse to punish a criminal (because it would be costly, say) would be to treat that criminal as if he were a dangerous child or harmful animal rather than, as R1 claims, as a moral agent deserving our respect. Since we are obligated to realize justice insofar as we are able, we are obligated to exact payment from each criminal (in the form of her punishment) for her crimes.

As I said earlier, R1–R5 are attractive and compelling. However, cases in which the criminal comes from an environment of poverty, lacks an education, and/or has experienced profound racism throughout his life give us reason to wonder about the applicability of Kantian Retributivism to such crimes. If it seems plausible to suppose that such social factors play a significant role in their committing crimes, one must, if one is to be a retributivist, have a response for such cases. There are two possible responses. The first response is to claim that the social factors caused the person to commit the crime and that, since the crime is not, properly speaking, a reflection of the criminal's will, punishment is unwarranted. The second response is to claim that (1) such social factors ensure that the criminal is insufficiently connected with his society; (2) since punishment is the repaying of a debt one owes to one's society, the criminal owes nothing to his society; and, therefore, (3) the criminal should not be punished. Richard Delgado, in advancing both arguments, refers to various social injustices more generally as a "Rotten Social Background" (henceforth, RSB). I hope to show that in spite of Delgado's arguments, the Kantian Retributivist need not accept either argument.¹²

Let us now (briefly) look at the first argument, that RSB caused the crime, and, therefore, the crime was not the result of a willful action for which one should be held responsible. Delgado gives four kinds of conditions that an RSB defendant might have experienced that would sufficiently show that she should be excused from punishment:

[1] [W]riters observe that daily existence in a ghetto environment creates a reservoir of rage, which, if tapped, can take control on the individual's actions. . . . In this sense, the defendant's conduct resembles a seizure or automatic reflex. The actor's conduct is not voluntarily determined, but rather directed by the dominating emotional force of rage. [2] Even where the defendant's conduct appears outwardly voluntary, the power of the RSB

12. I want to make it clear that Delgado is not primarily addressing retributivism; rather, he is attempting to show that a case can be made for defendants who have experienced RSB that is consistent with legal defenses currently used. I am using Delgado's arguments because he lays out the arguments relevant for this discussion. See Richard Delgado, 'Rotten Social Background': Should the Criminal Law Recognize a Defense of Severe Environmental Deprivation?, in PUNISHMENT AND REHABILITATION 249–73 (Jeffrie Murphy ed., 1995).

defendant's mental and emotional trauma might cause a different excusing condition, the loss of ability to control conduct. . . . [3] Dyscontrol could also result from physical and psychological changes associated with early poverty and deprivation. These changes could also alter perception and interpretation, causing the person to perceive incorrectly the nature or consequences of his or her actions. . . . And, [4] the circumstances of an RSB defendant's existence might lead him or her to a conclusion that his or her conduct is not wrongful, or less wrongful than any other available alternatives.¹³

Delgado claims that if any one of these four excusing conditions held, the individual who committed a crime should be excused. (In short, since R1 does not hold for these criminals, retributive punishment is unwarranted.) Can the Kantian retributivist accommodate RSB as an excuse? Certainly Kantian Retributivism can accommodate excuses. If R1 does not hold, then punishment is unjust. So the real question is this: Is RSB an excuse that Kantian retributivists *want* to accommodate? I have mixed feelings about this strategy. Consider the first excuse—the excuse that rage, once tapped, causes the person to act uncontrollably. Certainly Kant would accept that some actions, those caused by seizures, for example, are outside of one's control and deserve excuse. But is an uncontrolled rage like a seizure? This is an empirical question, of course, and not easily settled by speculation, but I think we ought to be hesitant to embrace this excuse. First of all, it is not obvious that the analogy between a rage and a seizure is an acceptable one. Seizures are verifiable, and we can reliably differentiate seizure-driven wrongs from non-seizure-driven wrongs. Can we likewise differentiate between a poor person's RSB rage-driven wrongs from a poor person's non-RSB rage-driven wrongs? (Or, are all rages experienced by poor people RSB rages by definition?) Second, and more problematic, for Kant rage (or any other strong emotion) does not render a person immune from moral judgment. In virtue of being an autonomous agent, one is morally required to will in accordance with the moral law, that is, in accordance with respect to oneself and all other persons as moral agents. And, for Kant, one is morally required to will in accordance with the moral law even when one has strong (rage-driven) desires not to.¹⁴

Suppose, instead, we look at RSB not as an excuse for a particular act, but as a way of showing that the defendant is not a moral agent. That is, suppose RSB prevents or destroys one's moral agency and renders one like a child or an insane person, incapable of seeing that one's actions are wrong or incapable of accurately perceiving the nature or consequences of one's

13. *Id.* at 258–59.

14. After all, one of the central ideas of this moral theory is the rejection of Hume's sentiment-based moral theory. For Kant, facts about our emotions and attitudes—for example, that we have no interest in being moral, are indifferent to being moral, or, as with the RSB defendant, have violent emotions that give us the urge to act immorally—are, in a significant sense, utterly beside the point. Our particular and idiosyncratic dispositions do not change the fact that we are autonomous agents capable of freely willing our actions.

actions. If so, then one is outside the moral community and is, therefore, not deserving of retributive punishment.¹⁵ This seems a plausible way to understand Delgado's suggestion that RSB renders one incapable of knowing right from wrong, or incapable of seeing that one's actions are wrong. As with the "rage excuse," I think we should be wary of embracing this suggestion too quickly. Surely there are people who are so damaged by their experiences or social situation that they can no longer be considered as moral agents. However, do we really want to exclude those who have been disadvantaged by social injustice from the moral community? For those of us who are attracted to retributivism because of its assumption that all persons should be treated with dignity and respect (R1 and its rejection of the assumption that crime is a sign of illness, need for treatment, or state control), this strategy is unappealing.¹⁶

So much for excusing crimes committed by people who suffer from RSB. Let us now look at the "outsider argument" that suffering from RSB means that (1) the criminal has insufficient ties with society; (2) since punishment is the repaying of a debt one owes to one's society, the criminal owes nothing; and, therefore, (3) he should not be punished. Which Kantian retributivist claim is this argument rejecting? It seems to be R4 (and, indirectly, R5). But, in fact, the real target of the objection is R2, the claim that a crime is a reflection of an autonomous agent's will *only*. The "outsider argument" instead reinterprets the crime as a *social* act. The claim is that because of the nature of the relationship between the wrongdoer and society, the wrongness of the crime fails to warrant punishment. Delgado writes:

From society's perspective, the wrongdoer has taken unfair advantage of the agreed-upon sharing of benefits and burdens, and therefore the wrongdoer owes something to society as a result of renouncing the burden of self-restraint which others have assumed. . . . How does this theory of punishment apply to an RSB defendant? The view that the criminal needs punishment "to heal the laceration of the bonds that joined him to society" assumes the actual existence of a community to which each individual is bonded in a meaningful way. . . . Thus, even if an RSB defendant is responsible for his or her acts, retribution theory provides little moral basis to punish him or her for those acts.¹⁷

15. Delgado explicitly rejects this interpretation. He writes, "The rotten social background is relevant only in that it can cause an excusing condition. While a person's background encompasses his or her entire past, the excusing condition arises at a specific moment when the crime was committed. An individual always "carries" his or her background with him or her, but the jury must determine whether it caused an excusing condition at the time of the crime." Delgado, *supra* note 12, at 260–61.

16. I realize that this argument does not prove that RSB does not cause criminal behavior. I hope to show only that the cost of embracing any of the four excusing conditions as a strategy for addressing RSB is a high one, and one that, in the face of such cases, the retributivist would adopt *last*, not *first*.

17. Delgado, *supra* note 12, at 263–64.

This argument is compelling because it rests on the plausible claim that society has failed to apportion to RSB individuals their fair share of social goods, and, therefore, a crime committed by such an individual does not create a debt that needs to be paid off through punishment. Thus, according to Kantian Retributivism, not every crime warrants punishment, only those that unfairly advantage criminals.

The problem with this argument is that it rests on a misunderstanding of Kantian Retributivism; therefore, Delgado is mistaken in concluding that Kantian Retributivism provides “little moral basis” for the punishment of RSB individuals. Remember that what is so attractive about Kantian Retributivism is the claim that persons are moral agents deserving respect and dignity in virtue of having the capacity to will in accordance with the moral law, *not* in virtue of being male, white, wealthy, economically significant (or having any other trait that is valued in one’s society) (R1). Because our moral worth is founded entirely on our capacity for autonomous actions, a crime is simply (and *solely*) evidence of one’s capacity to will autonomously (albeit immorally) (R2). That is why when Kantian Retributivism apportions punishment to “fit” the wrongness of the crime, it does not “build into” the criminal will the criminal’s social context as a way to adjust the punishment—one’s social status cannot be used as a reason to increase *or decrease* one’s punishment. Suppose two individuals both commit armed robbery. Both robbers steal \$1,000, and in neither situation is anyone injured. Mr. Jones is a poor black who has lived his entire life in a ghetto where violence is a way of life, whereas Mr. Smith is a middle class white who has had no real firsthand experience of violence or crime, but who simply craved excitement. Is Mr. Jones’s crime, in virtue of his RSB, less wrong than Mr. Smith’s? Obviously Mr. Jones and Mr. Smith experience a different relationship with their communities, but are the *criminal wills* of Mr. Jones and Mr. Smith sufficiently different so that the two deserve different punishments? If the answer is yes, that difference must lie *either* in the person’s ability to act autonomously (and this brings us back to viewing RSB as an excuse),¹⁸ *or* it must be that one’s autonomously willed actions are not merely a reflection of one’s respect for the moral law, but are also a reflection of one’s class, race, sex, or social value. The first option is not, as I argued earlier, a promising one. And it is precisely this second claim that Kantian retributivists want to deny. Instead, Kantian retributivists want to insist that as long as an act is freely willed, the punishment that it deserves is decided by examining only the value of the wrongness of that act.¹⁹

18. If you are tempted to build into this example features such as an inability on Mr. Jones’s part to restrain himself from robbing (because of his life in the ghetto), then you are regarding RSB as an *excuse*, not as a factor that reduces or eliminates the imbalances created by committing wrongs.

19. Kantian Retributivists would, I think, also have a difficult time accommodating the intuitions that, other things being equal, recidivists deserve more severe punishments and “first timers” deserve lighter sentences.

So what should we do—wistfully regard retributivism as a theory of punishment appropriate to worlds without social injustices? While that is the conclusion that many have come to, such a conclusion is premature. If we are to accommodate RSB, then the claim that must be reworked is R2—the claim that a crime is a reflection of the individual will itself, entirely divorced from a social context. But what this means is that Kantian Retributivism cannot accommodate RSB without ceasing, in a significant way, to be *Kantian* Retributivism. However, Hegel's theory of punishment—although like Kant's in being retributivist—can better address RSB because Hegel's theory is developed out of a political theory that regards a moral agent's social context as relevant to his punishment. Let us now look at Hegel's Annulment Retributivism.

III. ANNULMENT RETRIBUTIVISM

Providing a brief, instructive, yet accurate analysis of Hegel's theory of punishment is a particularly challenging task because to do so requires elucidating assumptions underlying his political theory. And, although Hegel's political theory is in some respects Kantian, many of Hegel's ideas are importantly different from Kant's and often misunderstood. Therefore, as we look at Hegel's Annulment Retributivism I will have to spend some time demonstrating how Hegel's political theory influences this theory of punishment. Let us begin as we did in the previous section and examine the retributivist claims.

Like Kantian Retributivism, Annulment Retributivism endorses R1—the claim that persons are free—and echoes the claim that any utilitarian theory of punishment is unjustifiable. Hegel writes:

To what extent is the threat [of punishment] compatible with right? The threat presupposes that human beings are not free, and seeks to coerce them through the representation of an evil. But right and justice must have their seat in freedom and the will, and not in that lack of freedom at which the threat is directed. To justify punishment in this way is like raising one's stick at a dog; it means treating a human being like a dog instead of respecting his honor and freedom . . . [A]nd any legal codes which may have originated in this doctrine [of deterrence] consequently have no proper foundation.²⁰

Annulment Retributivism rules out the criminal punishment of children or the mentally incompetent since children and the insane cannot commit willful wrongs.²¹ Likewise, unintentional or accidental wrongs and socially undesirable noncriminal acts cannot be punished since such acts are not willful wrongs. Obviously, taking measures to deter or prevent harms done

20. Hegel, *ELEMENTS OF THE PHILOSOPHY OF RIGHT*, sec. 99A (H.B. Nisbet trans., 1991).

21. *Id.* at secs. 100, 120.

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by children or the insane (or to prevent undesirable but noncriminal acts) may be desirable, but such measures are not annulling wrongs and therefore any responses to such acts cannot be *conceived of as punishment*.

This distinction between moral agents capable of willful wrongdoing and individuals incapable of willful wrongdoing brings us to the first assumption of Hegel's political theory that will heavily influence Annulment Retributivism. I will call this the Willful Actions Assumption. It is:

WAA: The willful actions of persons—both criminal and noncriminal—create rights claims

When a person acts willfully, her will is, among other things, a claim "I am free to do that" ("I am free to take possession of that thing," "I am free to destroy this thing").²² Because the will has altered the material world—it has transformed matter, thereby creating or altering a thing—the person's will is "embodied." When I transform a fallow field into an apple orchard, the effects of my actions are overt evidence that I am person, a being with a will. My will created a rights claim over that apple orchard. Although animals and (young) children move, transform and destroy matter, such actions do not establish rights claims because such actions are not willful.

This brings us to R2, the claim that crimes are freely committed wrongs that unfairly advantage the criminal. Like Kantian Retributivism, Annulment Retributivism stands by the first part of R2, the claim that crimes are freely willed wrongs. But Annulment Retributivism does not claim that crimes unfairly advantage the criminal. So for Annulment Retributivism, the R2 assumption is:

R2*: Crimes are freely willed wrongs that are "nullities."

What can Hegel mean? Hegel refers to a crime as a "show" or "semblance," and says that a "crime alters something in some way, and the thing has its existence in this alteration. Yet this existence is a self-contradiction

22. When Hegel speaks of a will he does not mean the faculty to which Kant refers as a free will. For Kant, our failure to realize our will does not affect the value of the will itself. In a well-known passage, Kant makes this point: "Even if, by some especially unfortunate fate or by the niggardly provision of stepmotherly nature, this will should be wholly lacking in the power to accomplish its purpose; if with the greatest effort it should yet achieve nothing, and only the good will should remain (not, to be sure, as a mere wish but as the summoning of all the means in our power), yet would it, like a jewel, still shine by its own light as something which has its full value in itself." Immanuel Kant, *GROUNDING FOR THE METAPHYSICS OF MORALS* 7–8 (James W. Ellington trans., 1981). For Hegel, a person who does not (or cannot) realize her will is a less free person than one who does; nonetheless, Hegel agrees with Kant, her worth as a moral agent is undiminished. When Hegel discusses Kant's sense of free will, he refers to this as the *predisposition* to will. But he insists that such a will, merely the deliberative faculty, is not a *will* at all. He writes, "I do not merely will—I *will something*. A will which . . . wills only the abstract universal, wills nothing and is therefore not a will at all." Hegel, *supra* note 20, at sec. 6A. A will must, for Hegel, be something that actually affects the material world and, thereby, establishes a rights claim.

and to that extent is inherently a nullity.”²³ Although wrongs are “semblances” or “nullities,” this does not mean that they are unreal or imaginary and that we are free to ignore them. Since crimes are willful actions, they exist as rights claims (WAA). Just as willfully transforming a fallow field creates a property rights claim, willfully assaulting a person creates a rights claim, albeit a wrongful one. But a crime exists only insofar as it is a negation, or denial, of what is right. The criminal, in assaulting his victim, denies that his victim is a free being and asserts that she is instead a *thing* (comparable to the fallow field), an object to use and manipulate for *his* purposes. But a person is not, properly speaking, a thing. Therefore, the criminal will is contrary to what is right, and it is, consequently, a “nullity.”

This brings us to the second assumption of Hegel’s political theory that plays an important role in Annulment Retributivism. I will call this the Rights Claims/Actual Rights Distinction. It is:

RCAR: Rights claims become actual rights when they are acknowledged by other rights-bearing persons in one’s society.

We saw with WAA that the willful actions of persons establish rights claims. But such claims become *actual rights* only when they are recognized by other rights-bearers in one’s community. The acknowledgment by others of my right to an object is not simply an acknowledgment of my *de facto* possession of that object but also an acknowledgment that I have willfully—and therefore rightfully—taken ownership of that object. The notion of one’s will being recognizably embodied in a thing is developed by Hegel in a discussion distinguishing rightful possession from the rights claims made by children.²⁴ Children, especially young ones, often regard most objects within their reach as their own. Yet these beliefs do not establish actual rights. Thus, what separates a child’s (false) belief that a thing is rightfully his from an adult’s (correct) belief that she has an actual right to a thing is that, since a child cannot act willfully, he cannot make willful rights claims that can be acknowledged by persons. WAA cannot be fulfilled; therefore, RCAR cannot be fulfilled. However, there is more to it than that. For it would seem that older children (children in their middle or late teens, say) are persons capable of making rights claims to own things. Yet very often teens do not have *actual property rights*. What this shows is that even if a person fulfills WAA and makes rights claims, other persons in her community can refuse to acknowledge those rights claims and thereby prevent her from having actual rights.²⁵

23. Hegel, *supra* note 20, at sec. 97A. Throughout this paper I will be concerned only with crimes, actions that violate natural rights. I cannot here address civil disobedience or revenge. Although Hegel’s analysis of these issues is interesting, it takes us too far afield for present purposes.

24. *Id.* at sec. 51.

25. An interesting turn Hegel scholarship has taken recently is in exploring the applicability of Hegel’s political theory to feminism. It is this idea of Hegel’s, the idea that a community can refuse to acknowledge the rights claims of certain persons and thereby ensure that those

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Can criminal rights claims become actual rights? Strictly speaking, no, they cannot. However, criminal acts can become “validated” in an unjust society and will, therefore, *seem* to be rights. Obviously, this is a complicated issue, one that gets at the heart of Annulment Retributivism. For simplicity, I will use Hegel’s discussion of slavery to illustrate this point. Though enslavement is hardly a typical crime we experience, the ideas are applicable to any crime.

If we hold firmly to the view that the human being in and for himself is free, we thereby condemn slavery. But if someone is a slave, his own will is responsible, just as the responsibility lies with the will of a people if that people is subjugated. Thus the wrong of slavery is the fault not only of those who enslave or subjugate people, but of the slaves and the subjugated themselves. Slavery occurs in the transitional phase between natural human existence and the truly ethical condition; it occurs in a world where a wrong is still right. Here, the wrong *is valid*, so that the position it occupies is a necessary one.²⁶

Again we see Hegel’s commitment to R1, the claim that persons are free and that enslavement is a violation of their natural rights as autonomous moral agents. However, there is a significant and interesting difference between a slave society and one like ours. In a slave society, because everyone (Spartacus excepted) believes that slavery is the proper, perhaps even “natural,” order of things, everyone—slaves and slave owners alike—is wrong insofar as he regards persons as things to be used for the purposes of others. (Of course, the slave owners are guilty of committing the additional (criminal) wrong of enslaving others!) In such a society, the criminal rights claims of the slave owners have “validity”; that is, those rights claims are regarded as legitimate, and the slave owners thereby experience those rights claims as if they were actual rights. (They cannot in fact *be* actual rights because the rights claims contradict the moral status of free persons.) What does this tell us about criminal rights claims? It tells us that unless society explicitly invalidates criminal rights claims, those rights claims will exist as valid rights, even though they are, in fact, wrongs.²⁷

Annulment Retributivism sounds very much like Kantian Retributivism in its endorsement of R3, the claim that punishment must “fit” the crime. In freely willing the crime, the criminal has willed to have an injury inflicted on herself of equivalent value. As with Kantian Retributivism, Annulment

persons do not have actual rights, that has generated such interest. For example, in order to sustain racist or sexist beliefs, it is vital that a society refuse to acknowledge the worth of the willful accomplishments of those regarded as inferior. The loss of such rightful recognition not only prevents one from having actual rights, it also prevents one from living a life as an acknowledged moral agent.

26. Hegel, *supra* note 20, at sec. 57A.

27. *Id.* at sec. 99.

Retributivism claims that the criminal will *itself* establishes what degree of punishment is appropriate. Hegel writes:

In becoming existent in something, however, the will enters the sphere of quantitative extension and qualitative characteristics, and hence varies accordingly. For this reason, it makes a difference to the objective aspect of crime whether the will so objectified and its specific quality is injured throughout its entire concept (as in murder, slavery, enforced religious observance, &c.), or whether it is injured only in a single part or in one of its qualitative characteristics, and if so, in which of these. . . . The distinction between robbery and theft is qualitative; when I am robbed, personal violence is done to me and I am injured in my character as consciousness existing here and now and so as this infinite subject.²⁸

To use Hegel's example, because theft and robbery are qualitatively different crimes, punishment must acknowledge that qualitative difference. To fail to punish the more serious crime more severely would be to fail to recognize it as being a more serious crime. The problem is not simply that the criminal is receiving a punishment more lenient than he deserves, but that the punishment treats that crime as a less serious wrong than it is.

According to Hegel, the requirement that punishment acknowledge the qualitative and quantitative differences is a formal requirement. In what *manner* we respond to particular crimes cannot be determined in the abstract, and for that reason Hegel refuses to present an explicit typology of crimes. The particularities of institutions of punishment will (and should) vary from society to society, reflecting particular sociohistorical circumstances, because different societies may coherently regard the "same" criminal act quite differently. No society is mistaken, according to Hegel; each simply values certain rights claims differently. Likewise, Hegel does not claim that any particular punishment is necessarily the appropriate response to a particular crime. What one society regards as an act of punishment, another may not. Thus, whether or not the act of punishment is appropriate to the crime depends on what each society deems appropriate. As long as each society distinguishes types of crimes from one another by scaling the punishment to "fit the crime," whatever form the punishment takes, it is appropriate to that crime. Thus the value of a crime is objectively determined, yet the value of a punishment is socially determined.²⁹

28. Hegel, *PHILOSOPHY OF RIGHT* (T.M. Knox trans., 1952) at sec. 96.

29. Hegel's treatment of R3 is actually more complicated still. On the one hand, Hegel explicitly claims that social practices determine the appropriateness of a particular punishment for a particular crime. Hegel writes: "How any given crime is to be punished cannot be settled by mere thinking; positive laws are necessary. But with the advance of education, opinions about crime become less harsh, and today a criminal is not so severely punished as he was a hundred years ago. It is not exactly crimes or punishments which change but the relation between the two." *Id.* at sec. 96A. This fits in well with what we have said about R3. On the other hand, Hegel (like Kant) explicitly writes that capital punishment is the appropriate response to murder. Hegel writes: "[M]urder . . . necessarily incurs the death penalty . . . [S]ince

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Let us look at Hegel's reasons for endorsing R4, the claim that retributive punishment is morally permissible. Punishment may look to the criminal to be an unpleasant event foisted upon her by others, but it is not. Hegel writes:

The injury which falls on the criminal is not merely implicitly just—as just, it is *eo ipso* his implicit will, an embodiment of his freedom, his right; on the contrary, it is also a right established within the criminal himself; i.e. in his objectively embodied will, in his action. The reason for this is that his action is the action of a rational being and this implies that it is something universal and that by doing it the criminal has laid down a law which he has explicitly recognized in his action and under which in consequence he should be brought *as under his right*. . . . [P]unishment is regarded as containing the criminal's right and hence by being punished he is honored as a rational being.³⁰

And Hegel writes:

Retribution is inflicted on the criminal and so it has the look of an alien destiny, not intrinsically his own. Nevertheless punishment, as we have seen, is only crime made manifest, i.e. *is the second half which is necessarily presupposed by the first*.³¹

Hegel gives two arguments for R4. The first is the claim that punishment—insofar as it is retributive and thereby explicitly acknowledges the personhood of the criminal—honors the criminal and is, therefore, permissible. (This was Morris's point in support of Kantian Retributivism mentioned in Section I above.) When Hegel says that a criminal has a right to be punished, he is saying that in punishing the criminal we are acting in "the right," acting in accord with *her right* that she established when giving volition to her criminal will. That is why in being punished, the criminal is being "honored as a rational being," and not being treated as a means to social order or as a dangerous animal. Punishment is an explicit acknowledgment of her capacity to will freely. This point is intuitive enough to anyone with even moderately retributivistic leanings.

However, the second argument strikes even "hard core" retributivists as peculiar. The second argument is that punishment is permissible because it is nothing more than the "second half" of the criminal will, the proper and

life is the entire compass of existence, the punishment [for murder] cannot consist in a value—since none is equivalent to life—but only in the taking of another life." Hegel, *supra* note 20, at sec. 101A. The claim that murder is the most serious wrong a person can do to another, and, therefore, warrants the most serious punishment, is plausible and in keeping with Annulment Retributivism as I have developed it. However, the claim that capital punishment is the only appropriate punishment for murder seems at odds with Hegel's claim that, with the advancement of education, less and less severe punishments are needed. Hegel's insistence that murder—and murder alone—necessitates capital punishment can be viewed *either* as an uncritical endorsement of the Kantian argument that only death "equals" the loss of a person's life *or* as a rather liberal-minded rejection of Germany's practice of executing criminals for far less serious crimes. Either way, it is not a view that fits well with the spirit of Annulment Retributivism.

30. *Id.* at sec. 100 (Hegel's emphasis deleted; mine added).

31. *Id.* at sec. 101A (emphasis added).

complete manifestation of that will that makes vivid the incoherence and wrongness of the first half. Hegel's point is not obvious, so I will try to elucidate it with an example. Suppose I require my students to write a philosophy paper on Hegel. One paper, by John Q. Student, is an 'A' paper; it is clear, largely correct, and provides a creative and insightful analysis of Hegel's ideas. Another paper, by Jane C. Pupil, is a 'D' paper; it is cursory, largely incorrect, and the criticisms are not clear or even obviously relevant. The grade that the 'A' paper receives is nothing more than a validation of what that paper is; in other words, that paper has been an 'A' paper since the student finished working on it—the student, in a sense, gave that grade to himself. All I do, as the person with the authority to grade papers for the course, is to validate the worth of the paper. It is likewise with the 'D' paper. In giving that paper a 'D' grade, I do not *make* that paper a 'D' paper; the student made it a 'D' when she wrote it. My grade merely "makes manifest" (to use Hegel's terminology) the worth of the paper.³²

The usual criticism given of R4 is this: The criminal, in committing a crime, did not act with the thought of his punishment in mind—indeed, he probably thought he would escape punishment—therefore, it is false to say that the criminal "willed his own punishment." While the premise of this argument is probably true, the argument fails to show that R4 is wrong. To explain why, I will use the student paper example again. It is very unlikely that students write papers with the thought of a bad grade in mind; indeed, most students seem to be under the impression that however little time they spend on a paper they will escape receiving a bad grade. So Jane C. Pupil can truthfully claim that she did not will a grade of a 'D'. However, she cannot truthfully claim that she did not write a 'D' paper. And this is Hegel's point exactly: The criminal may (truthfully) claim that he did not commit a crime with the thought of his punishment in mind, but he cannot deny that he committed a criminal act. And, therefore, Hegel claims that the criminal cannot truthfully claim that he did not will an act that is punishable. There are two reasons why Hegel's grounds for R4 still may be unper-
suasive: Either one rejects R1 by believing that all this talk of willfully committing crimes simply lends further evidence to the claim that most crimes are the result of passions or overwhelming drives, or one rejects the analogy between punishing a crime and grading a paper. The first reason simply reveals a lack of commitment to the retributivist project. The second, however, shows that one is still uncomfortable with the notion that punish-

32. Notice that this example assumes that there is an objective standard for grading papers, a standard that I can learn and apply. This is exactly analogous to Hegel's claim that crimes have objective value, and that we can know the value of crimes; of course, we may make mistakes, just as a teacher may be mistaken about what constitutes an 'A' or a 'B'. What about Hegel's claims that with education, punishments will get less severe or can differ in different societies (R3)? Well, we see those same factors with grading; teachers lament "grade inflation," and we are certainly aware that some universities claim to have a far higher standard for grading student work than others. Despite these variations in grading practices, it would be false to claim that the worth of a given paper is entirely relative or arbitrary.

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ment is not about controlling, deterring, or educating dangerous persons, but simply about annulling crimes (thereby revealing them for what they are, namely, violations of a person's rights). This point will be developed in more detail in the next section.

Now let us finally look at Hegel's reasons for endorsing R5, the claim that retributive punishment is an *obligatory* response to crime. We saw that when a person commits a crime, her will establishes a rights claim to the use or, more accurately, *abuse*, of the victim (WAA). And although the criminal will is wrong—the criminal cannot rightfully abuse another person—as long as a criminal will remains in effect, the denial of the victim's rights remains valid (RCAR). Thus, the failure to invalidate the criminal will is an *ipso facto* validation of the violation of the victim's rights. The correct thing to do is to annul the criminal will and thereby reveal what is *really* right, namely, that a criminal cannot rightfully abuse another person and that the victim is not, properly speaking, a thing to be abused. Hegel claims that it is retributive punishment that reveals the validity of right and the nullity (invalidity) of wrong. He writes:

Wrong is a show of this kind, and, when it disappears, right acquires the character of something fixed and valid. . . . What is here called the essence is just the principle of rightness, and in contrast with it the particular will annuls itself as a falsity. Hitherto the being of the right has been immediate only, *but now it is actual because it returns out of its negation*.³³

And he writes:

A nullity, however, must reveal itself to be such, i.e. manifest itself as vulnerable. A crime, as an act, is not something positive, not a first thing, on which punishment would supervene as a negation. It is something negative, so that its punishment is only a negation of the negation. *Right in its actuality, then, annuls what infringes it and therein displays its validity and proves itself to be a necessary, mediated, reality*.³⁴

The victim's right to not be assaulted, say, becomes 'actual' when the criminal rights claim is annulled. Punishment is our means of doing that. Thus, if we are to validate the rights of persons (RCAR), then we must punish crimes.

Of all the retributivist claims, R5 is the most controversial. Kantian Retributivism claimed that retributive punishment is fair; since justice obligates us to be fair, it follows fairly straightforwardly that retributive punishment is obligatory. But Annulment Retributivism does not claim that retributive punishment is *fair*; instead, it claims that retributive punishment reveals the *truth*—that criminals cannot rightfully abuse other persons. So

33. Hegel, *supra* note 28, at sec. 82A (emphasis added).

34. *Id.* at sec. 97A (emphasis added).

the typical criticism of R5 is this: While the truth is important, it is not always our most important concern. To continue with the student paper analogy, giving Jane's poor paper a 'D' will reveal the worth of that paper. But there are many reasons to give 'D' papers 'C's: Receiving a 'D' is upsetting; it rarely motivates students to improve, but instead usually causes them to give up on the course; and it could harm their chances for graduate school or a scholarship. Therefore, moral decency requires that we *not* rank our interest in revealing the worth of papers ahead of our interest in helping others. Likewise, our concern for the welfare of the criminal can outweigh our obligation to annul the crimes of that criminal. The problem with such an argument, though initially attractive, is that it is offering utilitarian reasons for rejecting R5. But such reasons conflict with R1, and abandoning R1 would mean abandoning Annulment Retributivism entirely. Moreover, I hope to show in the next section that there are good reasons to annul crimes—reasons that clearly outweigh utilitarian considerations.

In this brief introduction to Annulment Retributivism, I hope to have shown that while it is like Kantian Retributivism in being retributivistic, it is importantly different from Kant's more familiar theory of punishment. However, at this point several questions remain:

1. Isn't it absurd to claim that inflicting injury on a criminal "annuls" their crime—how can anything, let alone punishment, erase what has been done in the past?
2. Isn't Hegel's theory of punishment actually consequentialist, since it justifies punishment by appealing to a future state of affairs, namely, the invalidation of a wrong and the validation of right?
3. Even if we accept the claim that crimes must be annulled in order to validate right, why is *punishment* the only (the best?) means to do that? In particular, isn't it needlessly barbaric to insist that punishment be painful?
4. Does Annulment Retributivism obligate us to punish each and every crime, or can we make room for other important concerns (such as those which arise when the criminal suffers from RSB)?

In the next section I will address these questions, thereby further clarifying the notion of "annulment."

IV. ANNULLING CRIMES

Hegel writes:

If we do not grasp either the connection, as it is in itself, between crime and its nullification, or the thought of value and the comparability of crime and punishment in terms of value, we may reach the point of regarding a proper punishment as a purely arbitrary association of an evil with an illicit action.³⁵

35. Hegel, *supra* note 20, at sec. 101.

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Grasping the connection that exists between crime and punishment is difficult, and criticisms of Hegel's Annulment Retributivism abound.

A. Annulment as Erasure

The most common criticism of Annulment Retributivism, and the weakest, runs as follows. The claim that punishment annuls crime is extremely dubious, if not ridiculous: If to annul something is to "erase it," then punishment cannot *annul* crime because punishment cannot make it the case that the crime did not occur.³⁶ Hegel does not claim that punishment erases crime, nor that it makes things "what they were before." I think one reason for this common misunderstanding of Hegel's Annulment Retributivism is the term 'annulment' itself. It is an unfortunate choice of words to translate 'aufheben' which, more literally translated, means 'to lift up,' 'to bring out,' or, when used in a legal context, 'to repeal.' Punishing a criminal does not *erase* the crime, rather it makes vivid the facts that the victim has rights, that the criminal committed a wrong, and that society takes the victim's rights seriously enough to invalidate the criminal's wrong.³⁷

B. Annulment Retributivism is a Consequentialist Theory of Punishment

Allen Wood develops this criticism. Wood writes:

The righting of wrong and the doing of justice, of course, do look like paradigmatically retributivist reasons for punishing. But the state's intention to *reassert* the validity of right in the face of wrong looks like an intention not to do justice as such, but to promote a good end, namely the *public recognition* of the validity of right. . . . Why is it important for the state to *assert* the validity of right, to *express* its disapproval of crime? Is there any reason for it to do this apart from its devotion to such consequentialist ends as preventing future crimes and reassuring people that their rights are being protected?³⁸

36. Ted Honderich makes such an argument. He writes: "There is another retribution theory of very secondary interest. . . . A punishment is an annulment, a cancellation or a return to a previous state of affairs. Marriages, considered as contracts, can be annulled. Crimes cannot be, in any ordinary sense. My death or imprisonment, after I have killed a man, does not make things what they were before." Ted Honderich, *PUNISHMENT: THE SUPPOSED JUSTIFICATIONS* 35 (1969).

37. Steinberger stresses the point that Hegel does not claim that punishment "makes things what they were." He writes: "[N]egating the negation does not simply restore the status quo. For punishment in fact improves and elevates the concept of right; it explicitly introduces *into* that notion the idea that any violation will be punished and that the active and vigorous protection of rights is therefore a fundamental task of society." Steinberger, *supra* note 6, at 124 n.4.

38. See Allen Wood, *HEGEL'S ETHICAL THOUGHT* 110–112 (1990).

This criticism, too, rests on a misunderstanding. It is true that annulling a crime brings about consequences—the validation of the victim's rights and the invalidation of the criminal will. However, that fact by itself does not make Annulment Retributivism a consequentialist theory of punishment. The invalidation of wrongs is not a state of affairs that Annulment Retributivism intends to bring about (in the way that utilitarian theories use punishment to create maximal happiness or minimal pain).³⁹ Instead, Hegel is offering a *conceptual* justification for punishment: X's assault on Y establishes the right to assault Y (WAA), and as long as X's crime remains unpunished, it is valid (RCAR); therefore, as long as X's crime goes unpunished, the claim that X does not have the right to assault Y is hardly coherent. If we are to preserve conceptual coherence of moral terms (such as 'crime,' 'noncrime,' 'right,' and 'wrong'), we must demonstratively distinguish crimes from noncrimes. Just as a criminal will is a demonstrative assertion (albeit a wrongful one), an act of punishment is a demonstrative assertion. It asserts: *That act* is a crime and a willful wrong that is not tolerated in this society. Our intolerance is demonstrated by the infliction of injury on any person who commits a crime. In singling out and injuring criminals, punishment differentiates right action from wrong action, thereby establishing what right and wrong *are*.

Hegel is not explicit in explaining *how* punishment annuls crime. But from what has been established, I think there are at least two requirements that a system of punishment must meet before it can annul crimes. The first is that punishment be *public* and the second that it be *applied consistently*.

Let us look at the first condition, the publicity requirement. In order for punishment to annul crimes, punitive practices must be public. In order for us to know what our rights are (to know what we can legitimately do and what we cannot legitimately do), and, perhaps more importantly, what others can legitimately do to us, we must know which acts are punished.⁴⁰ This point is intuitive enough. Suppose that a criminal is tried, but the usual judicial process—the trial, court decision, sentencing and punishment—are kept secret. It seems that in such a situation there would be uncertainty about the rights of the victim and the wrongness of the criminal will in the minds of those who know of the crime and expect punishment. Suppose, now, that *all* crimes are punished secretly. In such a situation, it hardly seems that we could conceive of ourselves as having rights or that we

39. Hegel is not claiming that by identifying criminal acts as wrongs society "teaches the criminal a lesson" or "morally improves the criminal." The conclusions particular members of a society *in fact* draw from an act of punishment differ, depending on contingent features about members and their relationship to society. For example, the defining feature of the "rabble" is their inability to regard their own punishment *as punishment*—they instead regard it as an arbitrary infliction of injury—because they are alienated from their society. See Hegel *supra* note 20, at secs. 244–45.

40. *Id.* at sec. 228. To those ignorant of law and criminal justice, legal practices will appear as contingent, alien forces, and they will conceive of punishment in much the same way utilitarians conceive of punishment—as forces designed to control and deter illicit behavior.

could regard as *crimes* violations of what we believe to be our rights. In short, we know what our rights are when we know which acts are punished.

Now let us look at the consistency requirement. Earlier we saw that Annulment Retributivism requires that punishment “fit” the crime (R3). This requirement follows from the argument that because all crimes have a certain value, or degree of wrongness, if we want to invalidate a particular crime, we must respond with a punishment of the same value. More generally speaking, if we are to acknowledge the fact that all robberies, for example, have the same value, then we must punish all robbers with a punishment of the same value. To go back to the example used earlier, Annulment Retributivism would insist that Mr. Jones and Mr. Smith, because they committed the same crime, be punished similarly. If they are not—if, suppose, Mr. Jones receives a twenty year sentence and Mr. Smith a five year sentence with the possibility of early parole—then their crimes are mismarked as two *qualitatively* different crimes.

C. Annul Crimes, but Do Not Inflict Pain

Annulment Retributivism requires that punishment be painful—even in the face of the deterrence theorist’s objection that the infliction of painful punishment is (often) pointless because the criminal is incorrigible or because she is already guilt-ridden. But this insistence on inflicting pain, especially when the purpose of punishment is not (as it is with Kantian Retributivism) to have the criminal “pay back a debt,” but to “validate right,” seems difficult to justify. After all, if all we are doing when we punish is *identifying* crimes as wrongs it seems unnecessarily barbaric to insist that we do so by inflicting pain. To avoid all the unpleasantness that punishment typically incurs, we could instead make public denouncements of criminal activities. Our denouncements would state that a crime had been committed and that the victim’s rights were violated. Thus, we would have the publicity and consistency that Annulment Retributivism requires, without inflicting injury on the criminals.

The problem with such an argument, however, is that it conflates invalidating crimes with expressing an opinion about crimes. To invalidate a crime is more than to express disapproval; it is to confirm a commitment to taking rights seriously, and denouncements cannot do that. This is because denouncements do not, in fact, differentiate crimes from noncrimes. Denouncements fail to annul, because to respond to a crime with such a denouncement is, in fact, to give *two* responses. The first is the verbal statement that “killing is wrong,” for example. This statement draws a distinction between the rightful treatment of a person and wrongful treatment. The second response, however, is *implicit*. This response is our treatment of the criminal, and this response treats the criminal as any noncriminal, that is, as a person who is not punished. This second response *denies* the distinction

between the rightful treatment of a person and wrongful treatment. According to the second response, crimes and noncrimes are alike in that they are treated alike: They are actions tolerated without punishment.

To make matters worse, we are not simply contradicting ourselves with two conflicting responses when we denounce crime. We are, in fact, *validating* crime despite our explicit verbal statement denouncing its validity. How can this be? Because the decisive response is in our action—how we treat the criminal—and our action is the withholding of a punitive response. To continue with the student paper example, I could denounce the ‘D’ paper and praise the ‘A’ paper, but would their differing values be sufficiently confirmed if I then gave the two papers the same grade? It seems not.

We now see how important a role RCAR plays in Annulment Retributivism. Hegel is claiming that so long as the victim’s rights are not validated via the punishment of the criminal, that victim’s rights are not validated and the crime is not invalidated. And I think this is an intuitive claim. It is difficult to take seriously the assertion that an action is wrong if society does not actively differentiate that act from actions that are not wrong by responding with punishment. Mere declarations are insufficient; only the punishment of the criminal will satisfactorily reassert the rights of the victim.

But let us alter the criticism of Annulment Retributivism to this: Suppose it is correct that we must respond in some way to crimes and cannot treat criminals *just like* non-criminals (for that surely would make our insistence that there is an important difference between the two incoherent), it does not follow from that that we must inflict *pain* on the criminals. Instead of imprisoning or fining we could reserve a special set of painless responses to go with our denouncements. Thus we would be both explicitly and implicitly treating crimes as acts different from non-criminal acts.

Hegel does not explain why punishment must be painful, but an argument can be constructed on his behalf. It is true that reserving a special set of treatments to use only in response to criminal wills would both implicitly and explicitly differentiate crimes from noncrimes. The problem with such a practice, I suspect, is that it would fail to identify the crime as a *wrong*. Under such a system we would know that murder, for example, is different from charity, because acts of charity would be rewarded and acts of murder would receive a “special treatment.” But we would not know that murder is regarded as a *wrong*, that is, as an act that deserves moral judgment and righteous indignation. Nor would we regard the “special treatment” as a declaration of disapproval. In other words, we would regard the special treatment as a *descriptive response*, but not a *normative response*. And my suspicion is that a descriptive response would not have the normative force necessary to validate rights.⁴¹ The

41. I find the suggestion of reserving “special treatments” for the purposes of marking crimes very dubious because, in spite of my best efforts, I cannot think of *anything* that we could do to a person that would (a) satisfactorily differentiate her crime from noncrimes, (b) establish the *wrongness* of the crime, and (c) inflict no injury of any sort on her. My suspicion is that a category of such actions does not exist.

idea that the judgment of a wrong action requires normative judgment (and not merely a correct description), is, I think, at the very heart of Annulment Retributivism. To the Annulment Retributivist, the point of inflicting pain is not to bring about any particular consequence(s); to inflict pain is simply what it is to respond intelligibly and appropriately to a criminal will.⁴²

D. Punishing in the Face of RSB

At the end of Section I, I concluded that a problem with Kantian Retributivism is that it is unable to satisfactorily address cases in which the criminal suffers from RSB. Can Annulment Retributivism do any better?

Suppose we try to accommodate RSB with the following argument: Annulment Retributivism justifies punishment *as a practice*, but only indirectly justifies the punishment of any particular criminal. It is certainly true that moral concepts such as the concepts of right and wrong would be meaningless if a system of punishment was inflicted arbitrarily. But as long as we punish *most* crimes consistently, we can choose not to punish RSB crimes without threatening the coherence of our moral concepts. Thus Annulment Retributivism can accommodate our interest in treating RSB crimes differently.

There is some value in this argument. It is true that a few unpunished crimes would have little effect on our conception of right and wrong; in fact, if our conceptual hold on right and wrong were that tenuous, it would be impossible for us to identify miscarriages of justice. And it is true that a single act of punishment does not by itself annul a crime. It is only an act of punishment that is a part of a consistent, well-run punitive practice that can annul a crime. Therefore Annulment Retributivism justifies punishment as a practice, but not the punishment of each particular criminal. However, we need to insist that those who wish to withhold punishment provide the justification for so doing. What reason (what good *moral* reason) can we have for treating this crime differently from all similar crimes? If we choose to withhold the punishment of a particular murderer, then we need a good reason for treating this case differently; that is, there needs to be something about this act that differentiates it from other crimes. Reasons such as "The punishment of this criminal would upset the community" or "This is a time for healing, not a time for inflicting further pain" will not suffice, as these are utilitarian concerns that Annulment Retributivism explicitly regards as irrelevant to legitimate punishment. Annulment Re-

42. Notice that since criminals are free persons, the Annulment Retributivist cannot (and does not) claim that the point of punishment is to ensure that criminals experience certain feelings. If the criminal does not feel pain (remorse or shame, for example) when receiving the punishment that fits his crime, that does not mean that we are free to extend the punishment until he does! That fact that one particular instance of punishment is not painful to the criminal does not mean that it is an inappropriate punishment or that he is not being punished.

tributivism forces us to recognize the facts that no matter how much we wish to withhold punishment from some individuals, we have an obligation to take rights seriously, and the punishment of the criminal is the only means whereby we can demonstrate our commitment to the victim's rights.

Does Annulment Retributivism then have nothing to say about RSB cases? On the contrary, it has much to contribute to the conversation.⁴³ The assumption to examine is RCAR—the assumption that criminal rights claims become valid rights claims if left unpunished. If one believes that RSB criminals do not (or cannot) commit crimes that create valid rights claims (as non-RSB criminals do commit), then one will question the claim that the crimes of RSB criminals necessitate annulment. And we may have good reason to not regard the crimes committed by RSB criminals as having validity. RSB is an injustice not because some individuals have fewer material goods than others, but because being poverty-stricken (or the victim of racism or sexism) means that one is not recognized as an equal by the members of one's society. If others refuse to recognize a person as an equal, then, as we saw with RCAR, they will not recognize (and thereby not validate) the rights claims of that person. The result, as we saw with our earlier discussion of slavery, is that even though such persons *have* rights, they are not actual rights. Instead, what becomes validated is the legitimacy of the oppression and disenfranchisement of persons suffering from RSB.

What happens when such individuals commit crimes? Well, we face a dilemma: We could treat RSB crimes as we would non-RSB crimes and punish them, or we could continue to refuse to acknowledge the rights claims of RSB persons—both criminal and non-criminal claims. But to fail to recognize and validate the *legitimate* rights claims of the RSB person, yet recognize and invalidate the *criminal* rights claims of such a person, seems more self-serving than just. On the other hand, to continue to refuse to recognize the rights claims of an RSB person is equally offensive (and unjustifiable).⁴⁴

It may seem that we are at an impasse, but there are two more important contributions Annulment Retributivism can make to this discussion. The first is a reminder of the earlier argument for R5: As long as the criminal rights claim remains unpunished, it is valid; and, because we are obligated to take rights seriously, we are obligated to annul the crime. This argument applies whether the criminal suffers from RSB or not. Furthermore, we

43. Although Hegel certainly does not use the term "RSB," he does address the problem of punishing the "rabble," those individuals who are alienated and disenfranchised from society because of poverty. See Hegel, *supra* note 20, at secs. 237–46.

44. This is exactly the dilemma that Hegel finds himself in when he wonders about the legitimacy of punishing the "rabble," those alienated, poverty-stricken individuals who commit crimes. Hegel concludes that because such individuals know that they have been wronged by their society, they cannot regard their own punishment as being anything other than a contingent harm—precisely the kind of (utilitarian) punitive experience Hegel warned us to regard as illegitimate. Hegel writes, "Of course crime [committed by the rabble] can be punished, but this punishment is only contingent." Hegel's lectures of 1819–1820, *supra* note 20, at 454.

ought to take especially seriously the rights of the victim, because RSB criminals typically victimize individuals who also suffer from RSB. If we are committed to ending social injustice, rather than perpetuating it, then we must validate the rights of those individuals victimized by RSB crimes.

The second point is a reminder of a conclusion of the earlier discussion of RCAR: Crimes left unpunished have validity. As complex as our discussion of this matter has already been, there is one more facet to discuss. Hegel writes:

[W]hereas it would be impossible for society to leave a crime unpunished—since the crime would then be posited as right—the fact that society is sure of itself means that crime, in comparison, is always of a purely individual character, an unstable and isolated phenomenon. The very stability of society gives crime the status of something merely subjective.⁴⁵

The more “sure of itself” a society is—that is, the more a society is clear about which political values it is committed to, the more stable the political institutions are, and the more the citizens of that society understand and affirm those political commitments—the less damaging crimes are. That is because, as long as one is a member of a society that is “sure of itself,” crimes cannot damage one’s sense of moral worth and political standing. And, given that the purpose of punishment is to reveal what is right, if we are certain (even without punishment) what is right and, most importantly, what our rights are, then the need for punishment becomes less urgent.

What of a society that is not sure of itself? Hegel writes:

If a society is inwardly unstable, punishments must be made to set an example, for punishment is itself a counter-example to the example of crime.⁴⁶

A society that is burdened with social injustices such as racism, sexism, or classism is “inwardly unstable.” It may give lip service to “liberty and equality for all,” but the reality is that the privileged consistently refuse to recognize the rights of the nonprivileged. The result is that those who suffer from social injustice will regard their rights as contingent, and wholly dependent on the good will of the privileged, rather than as rights they are due because of their own willful actions. In such a society, the need for the annulment of crimes is urgent: For it is only by means of a consistent and public punitive system properly proportioning punishment that all individuals can have a clear idea of their rights.

Is our society “sure of itself,” or “inwardly unstable”? Settling that question is beyond the scope of this article, but I suspect that since a concern for RSB crimes motivated my analysis of Annulment Retributivism, we have

45. *Id.* at sec. 218A.

46. *Id.*

reason to believe our society is unstable. And if it is unstable, then it seems we have reason to remain committed to punishing RSB crimes.⁴⁷

V. CONCLUSION

So what should we conclude about Annulment Retributivism? Is it, as I claimed earlier, a more compelling version of retributivism than Kantian Retributivism? I think it is. But its appeal comes not from giving a simple answer to RSB cases; in fact, it is because of my suspicion of simple solutions to such complex social issues that I looked to Annulment Retributivism for insight into such cases. The appeal of Annulment Retributivism is that it underscores important ideas typically ignored by other versions of retributivism: Social injustices such as racism, sexism, and classism importantly affect our punitive practices, and an adequate theory of punishment must address these factors in its analysis.

47. I suspect that the real problem in our society is not the fact that we punish RSB crimes, but that we *over*-punish RSB crimes. Stephen Nathanson gives an insightful analysis of the racist and classist motives behind capital punishment sentencing. See Stephen Nathanson, *Does It Matter if the Death Penalty is Arbitrarily Administered?*, 14 PHIL. & PUB. AFF. 149–164 (1985).

[11]

Hegel on the Justification of Punishment

Dudley Knowles

My claim in this essay is that Hegel's theory of punishment is a very near miss. It is fair to say that the theory is complex and unclear—what else could account for the variety of interpretations it has provoked, the amount of good work directed to its exegesis and evaluation? But I think a clear path can be traced through the textual thickets. Unfortunately, when clarity dawns, we are left with a conclusion that I believe cannot serve to justify punishment: the claim that the criminal himself cannot complain if he is treated in roughly the way he has treated others. I want to end the essay on a provocative note by suggesting that Hegel's purpose, the justification of punishment within the normative framework of "Abstract Right,"¹ could best have been fulfilled had he espoused a hypothetical social contract theory. Hegel's refusal to do so is explicit. I suggest that he was confused.

Hegel wrote about punishment throughout his career; he discusses the problem in his early essay on *The Spirit of Christianity and its Fate*, in the essay on *Natural Law*, in the Jena manuscripts and the Nuremberg *Propaedeutic*. But the text on which I concentrate is the *Philosophy of Right*. His final statement of the principles of just punishment occurs at PR §220:

When the right against crime takes the form of *revenge* (see §102), it is merely right *in itself*, not in a form that is lawful [*Rechtens*], i.e. it is not just [*gerecht*] in its existence [*Existenz*]. Instead of the injured party, the injured *universal* now makes its appearance, and it has its distinctive actuality in the court of law. It takes over the prosecution and penalization of crime, and these thereby cease to be the merely *subjective* and contingent retribution of revenge and are transformed into

the genuine reconciliation of right with itself, i.e. into *punishment*. Objectively, this reconciliation applies to the *law*, which restores and thereby *actualizes itself as valid* through the cancellation [*Aufheben*] of the crime; and subjectively, it applies to the criminal in that *his law, which is known by him* and is *valid* for him and *for his protection*, is enforced upon him in such a way that he himself finds in it the satisfaction of justice and merely the enactment of what is *proper to him* [*des Seinigen*].

A sound interpretation of Hegel's views will clarify the conclusion he reaches here and outline the arguments that sustain it. The burden of argumentation is effected earlier in the book, in subsection 3, "Wrong" of "Abstract Right." Let us turn in that direction.

CONTEXT: PERSONS AND RIGHTS

"Abstract Right" elaborates the moral perspective of persons, taking "person" to be a technical term denoting our first-shot (immediate) conception of ourselves as discrete, atomic individuals. The "person" is the familiar protagonist of modern liberalism, the agent conscious of himself merely as distinct from other individuals, the most skeletal, universally applicable mode of self-ascription. In the classical literature of political philosophy, Hegel's concept of the person best articulates the target of modern communitarian writings. The category is almost as empty and formulaic as these critics of liberalism suggest.²

Sparse though the concept of the person may be, it has an appropriate normative content—the capacity for rights—and an appropriate normative expression—the language of rights, summarized in the command or imperative of right as '*be a person and respect others as persons*' (PR §36). As they say nowadays, the right has priority over the good. At this stage of the dialectic, Hegel has nothing to say concerning characteristic human goals or ends.³ "In formal right, therefore, it is not a question of particular interests, of my advantage or welfare" (PR §37). The rules of right are Nozickian side-constraints on action: "The necessity of this right is limited to the negative—*not to violate* personality and what ensues from personality. Hence there are only *prohibitions of right*" (PR §38).⁴ "Abstract Right" therefore delineates the contours of a rights-based morality. The details are filled out in three movements: "Property" explains the necessity of rights to property and physical integrity; "Contract" advances the analysis to explain the structures of will manifest in interpersonal transactions; "Wrong" advances the analysis still further by explaining that rights are enforceable—and, in the particular case of criminal wrongs, how punishment is the appropriate

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response.⁵ Hegel's account of punishment is thus lodged in a theory of rights. The point of the discussion of punishment is to show what is entailed by our concept of the person and its attendant doctrine of personal rights.

Of course, *our* prime interest may be in the philosophical problem of punishment; Hegel's chief aim, by contrast, is to show how our thinking about punishment informs our understanding of ourselves as rights-bearers.⁶ His specific thesis is that "through this process of mediation [the righting of wrong, generally the infliction of punishment] whereby right returns to itself from its negation, it determines itself as *actual* and *valid*, whereas it was at first only *in itself* and something *immediate*" (PR §82).⁷ The righting of wrong, whether it is effected in civil law by adjudication or compensation, or in criminal law by punishment, establishes the rights that persons characteristically claim as actual and valid in a way that their mere assertion, howsoever universal, could never achieve.

It is tempting to read Hegel's doctrine of punishment as the response to a difficult problem which all rights theorists face and which some have tackled explicitly.⁸ Rights theorists, minimally, demand respect for physical integrity, territorial mobility, and private property. Such rights demand protection and enforcement by coercive legislation that sanctions the punishment of offenders. Punishment standardly takes the form of capital or corporal punishment, imprisonment, fines, or compulsory social service—all of these being measures that in the normal case would constitute rights violations. Hence rights theorists propose, as protective of rights, coercive instruments that standardly would violate rights. Rights theorists, then, have a *special* problem concerning the justification of punishment and we should expect their discussion of both rights and punishment to reflect this.

That said, I am unclear whether Hegel himself notices the point. He certainly does not address the problem directly as a problem concerning rights—in fact, read naively, his claim that punishment is the criminal's right suggests the opposite: punishment, far from constituting an incipient violation of the rights of the criminal, serves to respect them. On the other hand, exactly the same form of the problem emerges when it is couched in terms of the value of freedom. Rights are necessary to promote and protect freedom. The coercion of the criminal looks to diminish his freedom in just the way that the criminal limits and repudiates the freedom of his victim. As injuries to the criminal's will, the standard modes of punishment promise to infringe on his freedom. As soon as we insist that rights are enforceable—in Hegel's terms, "Abstract Right is a coercive right" (PR §94)—paradox threatens.⁹

THE STRUCTURE OF THE ARGUMENT

Let us extract from *PR* §220, quoted above, several theses that will form the agenda of our discussion:

First, punishment, as imposed by courts of law, is the genuine reconciliation of right with itself.

Second, this reconciliation has an objective characterization: summarily, the restoration of right.

Third, this reconciliation has a subjective characterization: it is applied to the criminal on the grounds that he endorses its application. As expressed at *PR* §100, punishment is "*his right . . . a right for the criminal himself*, that is, a right *posited* in his *existent* will, in his action."

How are these theses related to each other? Each of them postures as a justification of punishment, so one might say: punishment is legitimate as the reconciliation of right with itself, and/or the restoration of right, and/or the recognition of right on the criminal's part. It is fair to say that the variety of *good* (and some bad!) interpretations of Hegel's discussion of punishment reflect the ambiguities of the "and/ors." Some readers have concentrated on one or another of these items; some have discussed two, or maybe three. I try to make sense of all three, defending the following theses.

The first claim, that punishment is the reconciliation of right with itself, is programmatic: it announces that the justification of punishment that is to follow is an implication of the theory of rights that has preceded it. As I suggested above, the notion of rights, their universal assertion and moral force, frames the context for the discussion of punishment that follows.

The second and third claims, concerning objectivity and subjectivity, may be viewed as distinct arguments. I argue that, although each may be (and have been) advanced independently as distinctive of Hegel's contribution to the philosophical problem of punishment, they work better in harness. This, of course, is Hegel's intention; this is how 'objectivity' and 'subjectivity' work for him. I shall outline the arguments severally, point out their limitations, and explain how these limitations are overcome when they are understood to imply each other. This is a nicely dialectical procedure, and, for Hegelians, it should be good news, supposing that the complex account is defensible. The bad news is that this defense is faulty. Were the flaws to be rectified, Hegel would be required to accept a version of contract theory that he did not fully understand, and which, to the extent that he did understand it, he positively rejected!

THE RECONCILIATION OF RIGHT WITH ITSELF

Mention of reconciliation calls to mind Michael Hardimon's recent discussion of Hegel's social theory.¹⁰ Reconciliation is achieved when those susceptible to the tensions of fulfilling both individual and social projects—tensions that may amount to alienation—find themselves at home in the world, and a world that is a home for its members is a world of freedom.

One might doubt that Hardimon's analysis can have any grip on Hegel's discussion of punishment. "Abstract Right" does not delineate a properly social world. But the persons who inhabit this hypothetical¹¹ moral structure recognize norms of property and physical integrity that are interpersonally valid and engage in transactions that express a common, though contingently fixed, will. If the institutions of ethical life comprise the actual social world, we can think of "Abstract Right" as a quasi-social world. It is not the pre-social world of solitary individuals that Rousseau conjectures in the *Discourse on the Origin of Inequality*. As in the states of nature encountered in Hobbes's *Leviathan* and Locke's *Second Treatise of Government*, persons like us (rather than our ancestors) confront each other with a social problem: how to manage interactions so as to avoid conflict and effect cooperation. It establishes in the foreground of discussion the fact that persons like us tend to assert conflicting claims of right—hypostatized as "Wrong," whether unintentional (nonmalicious wrong, PR §§84–86) or intentional (Fraud, PR §§87–89, or Crime, PR §§90–103)—which require arbitration or adjudication. Not only is "Abstract Right" a social world in this weak sense; as in Locke's natural state, its members have a distinctive moral status; as persons, they have a capacity for rights on the basis of which they make claims to respect from each other. So "Abstract Right" is enough of a social world to make talk of reconciliation apt, if it has features that call for reconciliation.

Furthermore (and this is the point of my citation of the conclusion of Hegel's discussion of punishment at PR §220), the hypothetical or abstracted construction of "Abstract Right" is integrated into the structures of ethical life chiefly in the first two figures of "Civil Society"—the "System of Needs" and the "Administration of Justice." At this level of analysis, members of "Civil Society" identify their social world as one in which the rights that they claim as persons, as atomic, discrete, individuals (albeit integrated into families—male heads of families, for the most part) find institutional expression and recognition.

We can attempt an understanding of the reconciliation of right with itself by first exploring the conditions under which such a reconciliation is necessary. Formally, it is the fact of wrongdoing that calls for recon-

ciliation. Wrongdoing is characterized as a show or semblance of right. Some sort of false claim concerning the principles of right is made by the wrongdoer. The wrong may be an unintentional error, calling for adjudication. Or it may be a fraud, wherein deception parades as respect for right, mutton is sold as lamb. Or it may, in the particular case of crime, involve a rejection of the principles of right. Hegel announces: "The initial use of coercion, as force employed by a free agent in such a way as to infringe the existence [*Dasein*] of freedom in its *concrete* sense—i.e. to infringe right as right—is *crime*" (PR §95).

The implication is twofold: the criminal's use of coercion violates the particular right of the victim to the object of his legitimate claims, and hence his freedom, and in addition, denies his moral status as a person, his capacity for rights.¹² The criminal, say a car thief, harms the victim, if not twice-over, then in two related domains, failing to respect both his specific right to the car he steals and the victim's moral status as an owner, a person with rights.

There is a contradiction at the heart of crime or, if not exactly a contradiction, then a couple of competing claims. The victim is a person, asserting a capacity for rights and making a specific claim to be, for example, the owner of this car. The thief, who has driven it away, rejects the victim's rightful claim and, by implication, his moral status as a person, a bearer of rights.

Unfortunately, at this stage in the argument of the *Philosophy of Right*, Hegel's analysis looks as though it collapses into a string of metaphors that darken rather than clarify the position. Crime is a nullity as manifested by the subsequent nullification of the infringement when punishment is effected. Punishment is the negation of a negation, the actuality of right, the necessary mediation of right with itself as it achieves the cancellation (annulment, negation, *Aufhebung*) of its infringement. This is the sort of rhetoric that has given Hegel a bad name with impatient critics. As Wood points out, if this language is taken at face value, some very bad arguments are being sketched.¹³

If these phrases are to have any purchase on reality, they must be construed loosely as trailers for the closer arguments to follow.¹⁴ We must read Hegel as insisting that persons cannot be, know, or feel themselves to be at home in a world where conflicting claims are made regarding each other's moral status and specific rights. The demand for the reconciliation of right with itself is the demand that the conflict or contradiction be sorted out—and, evidently, the way to do this is to vindicate one of the conflicting claims, advancing the analysis of rights by ascribing to them a force which was hitherto unperceived or unrecognized (as we shall see, on the part of the criminal). Better still, we can seek to demonstrate to one of the contending parties that they them-

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selves must accept the decisive judgment as an implication of other things they affirm. *This how Hegel proceeds.* Mercifully, we can abandon the rhetoric and attempt to track down the arguments.

THE RESTORATION OF RIGHT

Hegel tells us explicitly that punishment is the restoration of right. The claim is first made at PR §99: "Thus, an injury to the latter [the criminal] as an existent will is the cancellation [*Aufheben*] of the crime, *which would otherwise be regarded as valid*, and the restoration of right." It is repeated, as we have seen, at PR §220, where the "genuine reconciliation of right with itself" is effected objectively by legal punishment, which "restores [the law concerning rights] and thereby *actualizes itself as valid*."

This reading of Hegel's theory of punishment has produced a dense and useful literature in recent years. In 1971, David Cooper explained Hegel's talk of punishment restoring the right as the assertion of a logical or conceptual thesis. It is a necessary condition on rights being successfully asserted that their violation be punished. "Unless people are generally apprehended and punished for preventing others doing *x*, there is reason to suppose that the latter do not have the right to do *x*."¹⁵ Although Cooper stresses the conceptual connection between the assertion of rights and the application of just punishment, Peter J. Steinberger argues that the conceptual connection has not been drawn tightly enough. Since it relies on empirical judgments to the effect that only the *punishment* of offenders (i.e., hard treatment, and not, for example, public denunciation) can vindicate the rights which the criminal challenges, it misrepresents the logical or conceptual groundings of Hegel's defense of punishment.¹⁶ Allen Wood notices Hegel's talk of restoring the right and associates it with Feinberg's expressivist theory.¹⁷ He is ambivalent about attributing this theme to Hegel, claiming that Cooper's explication fails on all grounds: it is not explicitly stated in the texts, and, if it were, it would be a poor argument.¹⁸ Stephen Houlgate has challenged Wood's rejection of a conceptual thesis, claiming that "a [criminal] violation cannot therefore be allowed to stand but must be negated so that the necessary validity of right is restored."¹⁹ In the same volume, Wood replies forcefully, challenging the 'conceptual' interpretation of the restoration of right theme and rejecting the argument, once more, as "*just no good*."²⁰

We can begin to adjudicate these disputes by paraphrasing Hegel's statement of the position at PR §97. If an ostensible right is violated and the violator is not punished (supposing him to be known and available

for punishment, etc.), we must regard his deed as innocent; if he has taken some property, we must regard that property as his. *Contrariwise*, if the criminal is punished, the status quo ante crime is publicly restored; both the victim's moral status and his specific rights are vindicated. The deed cannot be both a crime and right.²¹ It is either not a crime or not right—and the response, by way of condonation or punishment, demonstrates one's judgment of it. Are these conceptual claims? As they used to say, it all depends what you mean by "conceptual." Cooper amplifies his interpretation by the employment of the Austinian apparatus of performative utterances, so perhaps this argument is best seen as the application of conceptual analysis of the 'ordinary language' variety.²² This kind of analysis evidently takes on board ground-level empirical beliefs (or "presuppositions") on the part of those whose discourse is being analyzed—which is why Steinberger feels Cooper's account is mistaken. (Steinberger's own contribution is an even more pernicky employment of this philosophical genre.) Wood gestures toward Feinberg's expressivist theory as a close relation, but, so far as I can see, does not endorse this reading, since he believes that a consequentialist concern for the restoration of rights cannot be reconciled with other, central, propositions of Hegel's theory, including notably the claim that punishment is retributive in intent. (Other critics have claimed that Hegel's account becomes teleological if the purpose of punishment is to restore the right—a version of rights- or freedom-consequentialism, perhaps.)²³ Houlgate believes that Hegel adduces a conceptual rather than a causal connection between punishment and the actualization or validation of rights, claiming that it is that of the form of logical necessity integral to Hegel's speculative practice.

It should be evident by now that these issues cannot be sorted out, at the level of interpretation, without the commentator's coming to some explicit conclusions concerning the methodology of Hegelian argumentation. It looks as though no advance is possible without exploring the deepest veins of Hegelian scholarship. If what we are faced with is conceptual analysis of a familiar sort, as Wood points out, the conclusion will be parochial and conservative—but then perhaps "we" can find agreement about how "we" think in "our" parish, and maybe this enterprise can afford "*comprehension of that truth concerning right, ethics, and the state [which] is as old as its exposition and promulgation in public laws and in public morality and religion*" (PR Preface ¶5).

If, by contrast, we are tracking the path of a speculative logic, we still have to unpack the metaphors that fill the conceptual space of "the reconciliation of right with itself," and what better way of doing this can there be than to find a valid argument? One point should be agreed on

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by all: that Hegel's argument, even as paraphrased lengthily above, is elliptical. As such, we should expect any plausible reconstruction of it to read the texts at their most capacious and go beyond them if the argument requires supplementation. And, *pace* Wood, a plausible reconstruction of the filling Hegel's argument evidently requires need not, of itself, amount to the reconstruction of a plausible argument or one that is consistent with everything else Hegel says on the topic.

It is on these grounds that I am content to endorse the drift of Cooper's original reading. Following my earlier remarks about Hegel's focus on our understanding of rights and his interest in what a philosophical examination of our practice of punishment contributes to that enterprise, I state the conceptual truth at the heart of the restoration of rights argument as follows:

Rights are not properly recognized (actualized) as valid claims, binding on others, unless their violation is met with punishment wherever possible.

As conceptual truths go, this is, as Wood implies, parochial. It applies to *our* world, supposing that alternative responses would not serve the purpose of public recognition. For all I know, there are other worlds wherein a public judgment of wrongdoing may suffice to restore the right. But then, I suspect (and this is suggested by Tunick's example),²⁴ public judgment would amount to denunciation, and this in turn would be regarded as hard treatment and hence as a measure of punishment. I speculate, on the basis of the sort of common sense that is acknowledgedly fallible, that in our world rights cannot be protected, right cannot be restored, by nonpunitive communications.

This reading can be supported in a way that Cooper does not attempt. Punishment can only restore the right if the institutions whereby punishment is effected constitute the means of public recognition of rights. Plausibly, if not speculatively or logically or conceptually-in-all-possible-worlds, public recognition requires public institutions. And so it proves. In the institutions of "Civil Society" that administrate justice, "Abstract Right" is posited objectively as law, universally promulgated and intelligibly codified, publicly dispensed in open court following trial by jury.²⁵ The practice of punishment, following court proceedings that have established the fact of criminal behavior, makes it clear to all parties (victim, criminal, and the general public) that the rights of the matter are as the law states them to be. The fact that the restoration of right is achieved *objectively*, in a public institutional process, emphasizes one element of the reconciliation of right with itself. In Hardimon's language, the social world is, and is known, felt, and affirmed to be, a home for rights-bearers. The victim's rights are vindi-

cated, his moral (now legal) status as a person with the capacity for rights is affirmed, the public's interest in countering a danger to society is satisfied (PR §218). But what of the poor criminal?

If the criminal is left out of the picture, the objection I mentioned earlier to the restoration of rights theory of punishment, that it is, at bottom, consequentialist, is telling. Even if, instead of the usual suspects (happiness, pleasure net pain, preference satisfaction, objective list), the value to be maximized is conformity to rights, or freedom, it is hard to see Hegel's account as distinctively retributivist. This is not because retributivism and consequentialism are inherently incompatible. Retributivism is too broad a philosophical church to permit this inference.²⁶ Rather, it is because the restoration of rights thesis seems to articulate the social functionality of punishment and seems to ignore that aspect of punishment which is directed toward the particularity of the specific violation. The dealings that the punitive agency has with the criminal seem to be secondary to the efficacy of punishment as the instrument of social purposes. If we read Hegel in the fashion that Cooper recommends and I have reconstructed, we must conclude either that the theory, as articulated thus far, does not accomplish its retributive intent, as Wood argues,²⁷ or that it is incomplete. This latter is my claim. The restoration of right is a public function: the objective face of the reconciliation that the fact of crime necessitates. The subjective aspect of the reconciliation of right with itself is revealed in the response of the criminal. To repeat: "reconciliation applies . . . subjectively . . . to the criminal in that *his law, which is known by him* and is *valid* for him and *for his protection*, is enforced on him in such a way that he himself finds in it the satisfaction of justice and merely the enactment of *what is proper to him*" (PR §220). We need to understand these ambitious claims. And we need to show how they amplify, rather than contradict, Hegel's concern for the restoration of right.

THE CRIMINAL'S RIGHT TO PUNISHMENT

The criminal objectively denies the right of the victim to his property, rejects his moral status as a person with a capacity for rights, and, in "Civil Society," repudiates the regime of rights as this is actualized, that is, institutionalized in the workings of the economy and the justice system by which it is regulated. Whatever the criminal *says* he is up to, this is what his action bespeaks. This is what Hegel calls, teasingly, "the right of the *objectivity* of the action . . . to assert itself as known and willed by the subject as a *thinking agent*" (PR §120), as distinct from the moral subject's right of intention. The rational agent knows that his

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actions disclose his intentions since he employs the same rational schema as others do to understand the actions of his fellows. And he knows how they will interpret his actions when he commits a crime. Irrationality (and, consequently, absent or diminished responsibility) is the cost of dislocation between the specification of his own intention given by the agent and the description of his action given by fully informed observers. So the criminal, if he is a real criminal, either knows or is culpably ignorant of the fact that he is striking both at his victim's rights and those recognized by his society. Whether or not he is alienated, he is in conflict with his society and reconciliation is called for.²⁸

Let us return to Hegel's treatment of punishment in "Abstract Right" to see how these facts are treated there. To focus discussion, I cite the paragraph we shall dissect:

The injury [*Verletzung*] which is inflicted on the criminal is not only just *in itself* (and since it is just, it is at the same time his will as it is *in itself*, an existence [*Dasein*] of his freedom, *his* right); it is also a *right for the criminal himself*,²⁹ that is, a right *posited* in his *existent* will, in his action. For it is implicit in his action, as that of a *rational* being, that it is universal in character, and that, by performing it, he has set up a law which he has recognized for himself in his action, and under which he may therefore be subsumed as under *his* right. (PR §100)

This argument suggests a variety of characterizations that have both a classical provenance and contemporary support. Punishment is justified since the rights violator has forfeited his rights.³⁰ Punishment is justified on the basis of the criminal's consent.³¹ Punishment is justified as the issue of a social contract.³² None of these positions, as outlined by their ancient and modern protagonists, quite captures Hegel's approach. But their variety alerts us to the possibility of rewriting his argument through this tradition. A successful reconstruction will conclude, as each of the above approaches attempts to do, that the criminal accepts the necessity of his own punishment. Thus it will present a process of practical reasoning that can successfully be imputed to the criminal.

The clearest way of reading the argument of PR §100 is stated carefully by Wood. It works back from the statement that the criminal's action sets up a law under which the criminal is himself brought. Through his action, the criminal is saying (in the sense of PR §120) and knows or ought to know that he will be taken as saying (*mens rea*), "It's fine to violate the rights of the victim." The implication of the law implicit in the action is that it is fine to violate the rights of the criminal in the same measure. The punitive response is justifiable *ad hominem*, in accordance with the principle of his own actions, a principle which, as a rational agent, he cannot reject. This conclusion is stated explicitly in the

Propädeutik: "It [the principle or law of the criminal's action] is valid only for the one who committed it because he alone recognizes it by his action and no one else. He himself, therefore, is essentially subject to this principle or 'Law' and it must be carried out upon him."³³

The difficulty, or rather, one difficulty,³⁴ with this argument is that it does little more than dress up the thought that the criminal himself cannot complain if he is treated in the same fashion that he treats the victim. As put, this thought has much to be said for it, but it is hard to see how it can be acceptable to the punishing agency. The criminal's act, we recall, also has the dimension of a 'negatively infinite judgment'; he denies the victim's capacity for rights—and, in "Civil Society," the whole regime of right, as this applies to its members. The punishing agency cannot be thought to assert *this* as the principle of *its* action, and, explicitly, it does not. Punishment recognizes the criminal's own right; through it he "is honoured as a rational being" (PR §100R). If this is true, how can the criminal's law be applied validly by the victim or the courts? One might say: because his law is valid *for* him alone, it is applied *to* him alone. But this is to lose the validity of the license which the criminal act yields to the punisher. And in "Civil Society," it would not be applied to him alone. It would be applied to any criminal, in accordance with the law and its proper procedures. The last thing the punishing agency should be doing is adopting the moral perspective of the criminal.

This response to Hegel also dresses up an old saw: two wrongs don't make a right. If this play on the universal character of the criminal's deed is all that Hegel manages at PR §100, it should be judged a weak and unconvincing argument. I think we can find an alternative that is stronger and more satisfactory.

A HYPOTHETICAL CONTRACT MODEL OF PUNISHMENT

To do this we return to the perspective of "Abstract Right" and note that all rational agents claim the moral status of person, assert their capacity for rights, and endorse the imperative of right commanding them to be persons and respect the personality of others. Respecting the personality of others requires one to respect their rights claims. All of this is clear to the criminal. If it is not, he is not a rational agent responsible for his actions. I claim that we can develop from these initial postulates a full justification of punishment on the hypothetical contract model. Thus:

1. Individuals claim rights against each other and recognize that others claim equivalent rights against themselves.

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2. They see no prospect of others respecting their rights while they themselves are immune to the rights claims of others.
3. They suspect that others may attempt to become free riders on the convention of respect for rights, since they understand that the attractions of wrongdoing with impunity on their own part is enhanced by the predictability of others' behavior—which they may be able to exploit.
4. Hence, they demand a guarantee of good faith in the principles of rights from those others who avow them, and they are willing to give such a guarantee themselves.
5. The guarantee which is universally offered and taken up is a recognition of the legitimacy of punishment exacted against criminals; a guarantee taken up against criminals on the part of all contractors, against themselves, of course, should they turn out to be criminals.
6. They accept that punishment may take the form of actions which, in other contexts, would amount to a violation of their rights.
7. Hence, those who wish their rights to be promoted and protected are willing to alienate their rights should they, themselves, violate the rights of others.³⁵

How much of this argument can we recognize in Hegel's texts? At first sight, admittedly, not much. Point 1 certainly is a Hegelian thesis, and so is the conclusion at point 7. This explicates the thought that, both in itself and explicitly, punishment is the right of the criminal. In some sense, the criminal consents to his punishment. What of the steps in between? I would be prepared to defend point 2 as a Hegelian position. Besides being one of the sources of the universality explicit in the imperative of right, it is a clear implication of the demand that law be universally valid and universally known through its promulgation in a public legal code and its prosecution in transparent legal processes (*PR* §§209–211, 215–217). We can take it, too, that the rational agent will endorse the principles of "Abstract Right" on which the administration of justice is, in part, founded. Similarly, I think point 6 can be defended as an implication of the Hegelian texts, which stress that the appropriate measure of punishment will be equal to the crime in point of its value (*PR* §§101, 214). But that is as far as the texts will take us.

Why did Hegel reject the sort of argument that Beccaria, and following him, Rousseau, had provided (although they disagreed on the specific issue of capital punishment)? Why was he so hostile to a contract argument in favor of punishment? The answer to these questions is that he was hostile to the social contract model of the ontology of the state, of the relation between the state and its constituent citizens, and

could not separate the philosophical problems of the legitimacy of sovereign authority and the legitimacy of state punishment. See how swiftly Hegel's discussion of Beccaria on punishment at *PR* §100 modulates into a discussion of the social contract account of the state.³⁶ Hegel may well be correct in his criticism of the implications of contract theory for an acceptable social and nation-state ontology, and by implication for an acceptable account of political obligation. But his central doctrines concerning *punishment* are lodged, as we have seen, in his discussion of our moral nature as persons, distinct and discrete bearers of rights. Thinking of ourselves as persons, as Hegel insists that we must, we may have quite sufficient cognitive-cum-rational resources to work out, from the perspective of the rational agent who turns out to be a criminal, that his liability to punishment, her legitimate punishability, is the inevitable normative consequence of his criminality.

All that is necessary for each person to reach this conclusion is that he review the claims he (and, by implication, each other person) is prone to make, the duties he (and all others) are likely to demand (and they and he to accept on their own part), together with some tariff of punishment as the recognized normative consequence of *anyone's* actual failure to respect the claims made and fulfill the duties they entail.³⁷ This argument does not rest on a contract theory of the state or a contract theory of rights. In principle, it is quite open to anyone to reject contract theories in these fields (and contract theories of justice and morality, too) and still endorse a contract theory of punishment.

The contract is, of course, hypothetical. It binds not as a real contract might, but solely in virtue of the independent persuasiveness of the premises it contains.³⁸ The version of the contract argument that I give above details the major elements of such a deduction as is available to the criminal contemplating his punishment, and, so far as I can see, it can be advanced without reference to our political standing as citizens of a nation-state. If this is right, Hegel was quite wrong to disallow this model of practical reason as germane to the deduction of our duties in respect of punitive institutions. His own favored argument, which has criminals, through their actions, laying down a law under which they in turn are brought, employs premises that are no less *individualistic*, although it exhibits the striking flaw of reaching the wrong conclusion.

Disregard for the moment Hegel's obliviousness to the resources of this model of practical reason when defending punishment. Ask instead: What is its plausibility, what are its limitations? I will not defend its plausibility here, but its usefulness is clear. It displays how the criminal, on condition of his rational agency, must accept as legitimate the punishment his actions call forth. This is exactly the conclusion Hegel's argument strains for. Its weakness is exactly the same as the weakness

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Wood notices in respect of the incompleteness of the consent version of Hegel's theory as he interprets it: Hegel's argument does not give "a *positive reason* why the state should actually inflict punishment. That is, granting that punishment does no injustice, we might still ask if there is any good reason for the state to punish."³⁹ Now this is a limitation on Hegel's theory following Wood's interpretation. If, on the other hand, Hegel were to have employed the contract theory I have recommended, he would have a perfectly straightforward reply. At this point in the dialectic he could bring together the 'objective' and 'subjective' strands of argument.

THE ALIGNMENT OF "OBJECTIVITY" AND "SUBJECTIVITY"

I have defended the claim that punishment is justified as restoring the right, but argued that this insight is not distinctively retributivist and, in any case, may be lost on the criminal.⁴⁰ Next, I claimed that the criminal may be made to accept the legitimacy of his punishment through a contract argument, but suggested, following Wood, that the argument is incomplete. Two things are needed to remedy these putative defects. In the first place, the contract argument requires a lemma to the effect that the criminal must recognize that his punishment is legitimate *insofar as it procures the restoration of right*—a goal that he himself endorses as appropriate for the law to effect. All citizens accept the validity of the goal of the restoration of rights, not because this is a valuable social function of punishment, but because it is necessary for the protection of the rights that they themselves claim. So the state *must* punish criminals if it is to serve the purpose of protecting rights.⁴¹ *Pace* Wood, this amounts to a positive reason for the state to punish, and not merely a license. Second, viewing the matter from the perspective of the concern to restore the right, this becomes a properly retributive function just as soon as it is realized that the specific institutions that effect the restoration do so in a manner that enlists the rational endorsement of citizens. The transparency that is at the heart of the administration of justice serves to embed the reasoning of the contractor in the institutions that identify, prosecute, and punish criminality. The restoration of right is accomplished by social mechanisms that demonstrate to all, honest and criminal citizens alike, the nature of their rights, their concomitant duties, and the penalties to be imposed for noncompliance. The institutions make explicit, through their laws, processes, and punitive regime, the rights for which persons demand protection. Notoriously, this knowledge, explicit in the alignment of subjectivity and objectivity, is not available to the criminal in "Abstract Right" where punishment

takes the form of revenge and revenge breeds vendetta (PR §102). But it is available in "Civil Society."

The restoration of right is achievable wherever the administration of justice is so structured as to make transparent to citizens the rights they may justly claim, the duties they must fulfill, and the penalties they will incur for noncompliance. In "Civil Society," the reconciliation of right with right, which is necessitated by the fact of crime, is achieved by the rule of law, serving ends which all citizens endorse as promoting their interests and dispensed in courts of law which make that endorsement evident to reflective, rational agents. The hypothetical contract device explicates the structure of practical reason by which all rational agents, criminals included, can be presumed to accept the legitimacy of punishment. By embedding the necessity of the restoration of right within the practical reason of all rational agents, and by describing how the administration of justice articulates the self-understanding acquired by these practical reasoners, we deflect the outstanding objections. Against all his instincts, but following through on his most convincing arguments, Hegel should have employed a hypothetical contract argument to defend the institution of punishment.⁴²

NOTES

This essay has been improved through my having to reflect on the criticisms of the Hegel Society of America referees. They may disagree! But thanks are due for their detailed comments. Thanks are also due to those who helped me improve the essay following its presentation at the HSA meeting. Mark Tunick, Robert Berman, Robert Williams, and Stephen Houlgate were particularly helpful in getting me to change and clarify the argument.

1. I stress "the normative framework of 'Abstract Right'," meaning by this the concept (*Begriff*) of "Abstract Right," ignoring Hegel's conclusion that the concept cannot be actualized since a positive realm of "Abstract Right" would be riven by vendetta (PR §§102–103). As we shall see, the concept of "Abstract Right" is actualized within "Civil Society." Citations of PR refer to G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood, tr. H. B. Nisbet (Cambridge: Cambridge University Press, 1991).

2. I have in mind the views of Charles Taylor and Michael Sandel, among others. See Charles Taylor, "Atomism," in *Philosophical Papers*, vol. 2 (Cambridge: Cambridge University Press, 1985), and "Cross-Purposes: The Liberal-Communitarian Debate," in *Liberalism and the Moral Life*, ed. N. Rosenblum (Cambridge, Mass.: Harvard University Press, 1989); Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982).

3. This is one reason why "Abstract Right" is *abstract*.

4. Allen W. Wood fails to notice the careful logic of Hegel's initial presentation of his theory of rights, and this infects his reading of Hegel on pun-

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ishment. Discussing David Cooper's interpretation, he writes, "In the theory of abstract right developed in PR §§34–80, he regards abstract right as conferring on persons both a permission and a warrant to exercise arbitrary choice within a limited sphere (PR §§38, 41). Only later does he focus attention on the claim that others should respect this sphere (cf. PR §49R)." Allen W. Wood, *Hegel's Ethical Thought* (Cambridge: Cambridge University Press, 1990), p. 111. PR §38, as quoted above, with its characterization of the rules of right as negative, as *prohibitions*, shows that this is a mistake—as does the imperative of right itself (PR §36), enjoining us to "respect others as persons," which PR §38 glosses in negative terms. The 'permission or warrant' Hegel characterizes at PR §38 is not merely correlative to the duty of noninterference; the "positive form of commandments of right is, in its ultimate content, based on prohibition."

5. It is not a coincidence that this structure mirrors that of Nozick's entitlement theory of justice, which consists of principles governing acquisition, transfer and rectification. See R. Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974), pp. 150–51. In "Abstract Right," Hegel is presenting the core doctrines of atomistic liberalism. Although he traces the origins of this style of morality to the Roman world, in effect he is presenting a digest of modern, that is, post-Reformation, rights theory as one (but *pace* Nozick et al., only one) element of the way moderns think about ethics. *Pace* the communitarians, by contrast, although rights theory is not the whole story concerning our ethical obligations, it is ineliminable. Hegel insists, surely correctly, that we just *do* claim rights nowadays, seeing ourselves as distinct individuals. The metaphysical blankness of the concept of 'person' is remedied by its amplification, as rights are specified, and as other modes of self-identification are added. It is certainly not rejected as conceptually inchoate.

6. Robert R. Williams notices this point. See *Hegel's Ethics of Recognition* (Berkeley, Los Angeles, and London: University of California Press, 1997), pp. 155–57. "Wrong clarifies the substantial nature of right" (p. 155). See also I. Primoratz, *Justifying Legal Punishment* (Atlantic Highlands, N.J.: Humanities Press, 1989), p. 74.

7. The point is repeated in Hotho's notes: following punishment, "right acquires the determination of something fixed and valid. . . . Whereas right previously had only an immediate being, it now becomes *actual* as it returns out of its negation; for actuality is that which is effective" (PR, Addition to §82).

8. Locke and Rousseau tackle the problem head on. See J. Locke, *Second Treatise of Government*, §§6–9, 16–19, 87–88 and elsewhere; J.-J. Rousseau, *The Social Contract*, bk. II, ch. V. Nozick notices the difficulty and skates over it quickly, suggesting that perhaps a social contract argument promises a solution. *Anarchy, State and Utopia*, pp. 137–38. In "Punishment and Rights," *Punishment and Political Theory*, ed. M. Matravers (Oxford: Hart, 1998), I discuss a range of solutions to this problem.

9. Lewis P. Hinchman claims that Hegel is addressing this problem. See "Hegel's Theory of Crime and Punishment," *The Review of Politics*, vol. 44, 1982, p. 543. Allen W. Wood hints at such a reading. See *Hegel's Ethical Thought*, pp. 109–10, as does Robert Williams, *Hegel's Ethics of Recognition*:

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"Although in general coercion is a violation of right, sometimes coercion is necessary, and if necessary, then justified. Our question is, How is coercion of freedom—which is strictly speaking impossible—nevertheless possible?" (p. 158).

10. Michael O. Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge: Cambridge University Press, 1994), pp. 95ff.

11. "Hypothetical" gives us yet another meaning of *abstract* in "Abstract Right." The norms of "Abstract Right" require a "Civil Society" for their actualization.

12. Crime "constitutes a *negatively infinite judgement*" (PR §95). In the paragraph cited, this is taken as a claim that crime negates not merely my will embodied as it is in property, but also "the universal and infinite element in the predicate 'mine'—i.e. my *capacity for rights*." At PR §218, where crime is considered in the context of "Civil Society," the scope of the infinite judgment is widened, so that we are to see the criminal act as striking at society, presumably at the whole normative regime. In consequence, criminal action is viewed as "a *danger* to society." Which actions constitute a danger to society beyond violations of individual rights? This issue is discussed by Mark Tunick, *Hegel's Political Philosophy* (Princeton, N.J.: Princeton University Press, 1992), pp. 110–13.

13. Allen W. Wood, *Hegel's Ethical Thought*, pp. 112–13.

14. It may be objected that these sayings are not metaphors, that they characterize the structure of Hegel's argument in terms of his distinctive speculative logic. I have no doubt that this is what Hegel *thought* he was doing. At this point, I don't want to pick a fight with those who insist that there is a distinctive and genuine logic here that constitutes good argument. On the other hand, I do want to insist that the argument which is being sketched is *unpacked* in the detail of the discussion that follows. I want to allow Hegel the opportunity to be persuasive to those for whom the speculative logic is a mystery, since this was a dialectical strategy he himself was ready to exploit, in both the text and the lectures on the *Philosophy of Right*. (I make this comment in order to address objections strongly put at the University of Georgia meeting.)

15. David E. Cooper, "Hegel's Theory of Punishment," in *Hegel's Political Philosophy: Problems and Perspectives*, ed. Z. A. Pelczynski (Cambridge: Cambridge University Press, 1971), cited at pp. 162–63.

16. Peter G. Steinberger, "Hegel on Crime and Punishment," *American Political Science Review*, 1983, vol. 77, pp. 858–70.

17. Joel Feinberg, "The Expressive Function of Punishment," in *Philosophical Perspectives on Punishment*, ed. Gertrude Ezorsky (Albany: SUNY Press, 1972).

18. Allen W. Wood, *Hegel's Ethical Thought*, pp. 111–13.

19. Stephen Houlgate, "Hegel's Ethical Thought," *Bulletin of the Hegel Society of Great Britain*, no. 25, 1992, cited at p. 12.

20. Allen W. Wood, "Reply," *Bulletin of the Hegel Society of Great Britain*, no. 25, 1992, cited at p. 44.

21. "It would be impossible for a society to leave a crime unpunished—since the crime would then be posited as right" (PR §218A). Mark Tunick illustrates this point with a good story from the Upper Congo, concluding that

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"without the old woman's response [of denunciation] there would have been no crime: not because if nobody discovers it happened it didn't happen, but because if nobody declares it's wrong, it's not." For further details, see M. Tunick, *Hegel's Political Philosophy*, pp. 78–80. Likewise, if technical violations of the law go openly unpunished, as was the case in Scotland before the law on consensual homosexual acts was brought in line with the reforms effected in English law, we may judge that no wrong is committed. Where prosecution is capricious and arbitrary—this is the early history of boxing in Britain; sometimes the magistrates stopped the fights, sometimes they sat in the front row—the law is an ass because the right is indeterminate.

22. Allen Wood notices this, commenting that the methodology is as defunct as Hegelian speculative logic! Later, he claims, intriguingly, that the "conceptual argument" "deliberately leaves unasked the critical question whether 'our' talk, and the 'form of life' it reflects, can be given any rational justification . . . [hence] it embodies a fundamentally *Anti-Hegelian* attitude toward philosophy." See "Reply," pp. 43–45.

23. For another example of this line of criticism, see S. I. Benn and R. S. Peters, *Social Principles and the Democratic State* (London: George Allen and Unwin, 1959), p. 177.

24. See n. 21.

25. For these details (and more), see *PR* §§209–229.

26. In conversation, Mark Tunick convinced me of this.

27. Allen Wood, *Hegel's Ethical Theory*, pp. 110–12.

28. There is a general difficulty in the background here concerning Hegel's characterization of the content of the mind of the criminal. What exactly must we be able to claim about what he knows about what he is doing? Crime is not, after all, nonmalicious wrongdoing. Is it enough that we make true judgments concerning what the criminal ought to know? These are standard problems in applying the doctrine of *mens rea*, and I shall have more to say about this later.

29. Stephen Houlgate puts it to me that "a right for the criminal himself" mistranslates "ein Recht an den Verbrecher selbst." The Knox translation, reading "a right established within the criminal himself" (G. W. F. Hegel, *Hegel's Philosophy of Right*, tr. T. M. Knox (Oxford: Clarendon Press, 1952), is better because it does not carry the implication that "a right for [my italics] the criminal himself" is a right of which the criminal is fully aware, or, perhaps, even stronger, actively demands. I can't say whether the translator's "for" carries the implication of full self-knowledge which is distinctive of Hegel's *für sich*. The precise point is that the criminal's *action* bespeaks his existing will. Neither the original nor its translation should be taken to entail that the criminal explicitly asserts the law of his action, as it were giving a running commentary on what he is doing. It is implied that he ought to accept such a law in accordance with the "right of objectivity of the action" (*PR* §120). Such an implication can properly be represented as the conclusion of a hypothetical contract argument, of which more later. See n. 28 *supra*.

30. John Locke, *Second Treatise of Government*: "[The criminal] so far becomes degenerate, and declares himself to be quit the Principles of Human Nature and to be a noxious creature" (§10); "In so revolting from his kind to

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that of Beasts and by making Force which is theirs, to be his rule of right, he renders himself liable to be despised . . . as any other wild beast or noxious brute" (§172). For a modern argument to the effect that the rights of the criminal, which would otherwise prohibit boundary crossings, are forfeit, see Alan H. Goldman, "The Paradox of Punishment," *Philosophy and Public Affairs* 9 (1979).

31. J.-J. Rousseau, *The Social Contract*: "the death penalty inflicted upon criminals may be looked on in much the same light [as conscription]: it is in order that we may not fall victims to an assassin that we consent to die if we ourselves turn assassins" (bk. II, ch. IV). For a modern treatment, see C. S. Nino, "A Consensual Theory of Punishment," *Philosophy and Public Affairs* 12 (1983).

32. Cesare Beccaria, *On Crimes and Punishments, and Other Writings*, ed. R. Bellamy (Cambridge: Cambridge University Press, 1995). For a modern treatment, see Jeffrie Murphy, "Marxism and Retribution," *Philosophy and Public Affairs* 2 (1973).

33. G. W. F. Hegel, *The Philosophical Propaedeutic*, ed. M. George and A. Vincent, tr. A. V. Miller (Oxford: Blackwell, 1986), p. 31. G. W. F. Hegel, *Philosophische Propädeutik, Sämtliche Werke*, ed. H. Glockner (Stuttgart: Frommann Verlag, 1971), vol. 3, p. 68. This argument is emphasized by Igor Primoratz in *Banquos Geist. Hegels Theorie der Strafe. Hegel-Studien*, Beiheft 29, 1986, and fully endorsed in *Justifying Legal Punishment* (Atlantic Highlands, N.J. and London: Humanities Press, 1989), ch. 4, especially pp.76–79. Robert Williams, *Hegel's Ethics of Recognition*, also follows this line: "Hegel believes that retribution is just because retributive punishment is simply the reversal of the offense; that is, it demands that the principle of the transgression be applied to the offender" (p. 168). Neither Hegel nor his interpreters see that this is a very bad argument. If the principle of the transgression endorses the violation of rights, that should disqualify it as a principle to be applied by any other agency. The act of punishment should make this disqualification explicit rather than employ the invalid principle to vindicate punishment. By contrast, the thought that the criminal cannot legitimately complain is very useful when it is the appropriate *measure* of punishment that is being considered, as Primoratz sees (*Justifying Legal Punishment*, chs. 4.5, 5.2).

34. There are others. How do we get over the problem of the criminal who explicitly disavows the imputed saying? If we answer that he ought to recognize that he will be taken to be saying this, we are adducing his *hypothetical* consent to the proposition: he would accept it if he were rational, fully informed, sincere, and apprised of the logical consequences of other propositions he affirms. This takes us halfway down the road of hypothetical contract, wherein rational agents take into account what others, as well as themselves, may reasonably reject as the basis for agreement on principles.

35. I defend this argument in "Punishment and Rights," where I argue that it shores up weaknesses in both forfeiture and consent arguments to the conclusion that the criminal wills his own punishment.

36. Contract theories of the state are criticized in PR at §§75 and 258 in addition to the above.

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37. If this claim is hard to stomach, remember that Hegel himself insists that the justice of punishment can be demonstrated on the basis of the very limited normative resources available to the person under "Abstract Right." "The state is not a necessary condition of justice in itself," Hegel claims at §100R.

38. Famously, this point is made by Ronald Dworkin, "The Original Position," in *Reading Rawls*, ed. N. Daniels (Oxford: Blackwell, 1975), p. 18. Despite Hegel's knowledge of the contract tradition, especially as employed by Rousseau, Kant, and Fichte, I don't think he managed to unravel the striking differences between the actual and hypothetical forms of the argument. Had he done so, he would have seen the aptness of the hypothetical contract structure for modeling the arguments of "Abstract Right" and the sections of "Civil Society" that discuss the protection of persons' rights under the "Administration of Justice." The version of hypothetical contract theory I employ here derives from T. M. Scanlon, "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, ed. A. Sen and B. Williams (Cambridge: Cambridge University Press, 1982). For an application of this style of normative ethics that is useful in thinking about punishment, see T. Nagel, *Equality and Partiality* (Oxford: Oxford University Press, 1991), ch. 4.

39. Allen Wood, *Hegel's Ethical Theory*, p. 116.

40. To be specific, the implication is not that this is a bad argument. I believe it's a good one. Rather, it looks inconsistent with other claims that Hegel makes about the retributive intent of punishment.

41. To deflect objections: this is not the only purpose of the state. Rather it is just the best way of securing that freedom which is required by the fact of our personhood.

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Part III

Hegel's Philosophy of Action
and Criticism of Kant

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THE EMPTINESS OF THE MORAL WILL

Allen W. Wood

§ 1: Introductory

It is well known that Hegel contrasts the "Moral standpoint" or "morality" (*Moralität*) with the higher standpoint of "social ethics" or "ethical life" (*Sittlichkeit*), and that he regards Kant's ethical theory as an expression of the moral standpoint. Hegel finds many shortcomings in the moral standpoint, but probably the most famous of Hegel's criticisms of Kantian moral theory is the charge that Kant's theory is an "empty formalism," incapable of providing any "immanent doctrine of duties," (PR § 135R)¹ The Kantian moral law, says Hegel, has no content; its only criterion of morally right action is non-contradictoriness, and that proves to be no criterion at all, because it is a criterion which even the most immoral actions are able to satisfy. (PhG para. 431, EL § 54)

The "emptiness" charge, as I will call it, is usually interpreted as a criticism of Kant's first formulation of the moral law in the *Foundations of the Metaphysics of Morals*, the formula of the "universal law": "Act only according to a maxim through which you can at the same time will that it should become a universal law." (G 421/39) Accordingly, the emptiness charge is usually discussed in connection with Kant's four famous examples of allegedly immoral maxims which cannot be willed as universal laws of nature without contradiction. Philosophers have often been puzzled by these arguments, and wondered how Kant's "universalizability" criterion is supposed to work. Some, such as John Stuart Mill, have even concluded that Kant fails to show "that there would be any contradiction, any logical (not to say physical) impossibility, in the adoption by all rational beings of the most outrageously immoral rules of conduct."² It has usually seemed natural to identify Hegel's emptiness charge with this criticism of the universal law formula.

Considered in this light, however, Hegel's emptiness charge is something of an embarrassment to any self-respecting Hegelian. The embarrassment is not that the universal law formula is straightforward and unproblematic in its application, but rather that Hegel's criticisms of the formula seem to rest on quite unsubtle misinterpretations of it. Hegel seems to interpret Kant as denying that we can appeal to any empirical facts at all in the course of moral reasoning. He seems oblivious to the most elementary

points involved in Kant's application of the universal law formula, such as the distinction between its being impossible for a maxim to *be* a universal law and its being impossible for us to *will* that it is, and even the distinction between its being impossible (or impossible to will) that one person act on a certain maxim and its being impossible (or impossible to will) that all rational beings act on it. Hegel also represents Kant as committed to arguing from the universal law formula in bizarre ways to obviously false conclusions, for instance, as having to claim that it would be logically impossible for the institution of private property not to exist. (PhG para. 430, PR § 135R, VGP 3: 368–369/461, NR 462–463/77–78) Thus it is not surprising that as a rule recent scholars have concluded that Hegel's criticisms have no force against Kant on any plausible interpretation of the universal law formula.³ Though there may very well be difficulties in applying the universal law formula, Hegel seems so far from a correct understanding of the formula that he cannot be credited with identifying any of them.

Hegel's most familiar statements of the emptiness charge, in the *Phenomenology of Spirit* (PhG paras. 429–437), the *Philosophy of Right* (PR § 135R,A), the *Berlin Encyclopedia* (EL § 54,A) and the *Lectures on the History of Philosophy* (VGP 3: 366–369/458–461) are all quite brief: the longest is about five pages. None, moreover, is anything but a recapitulation of Hegel's first full statement of the emptiness charge, over ten pages in length, found in the 1802 essay *On the Ways of Treating Natural Right Scientifically*. (NR 453–466/70–80) And that statement is the outcome of a period of intense critical reflection on the ethical views of Kant and Fichte which had begun in 1798, before the start of Hegel's university career at Jena. If we follow the development of these reflections, I think we will gain a picture of the emptiness charge and the motivations behind it, which is quite different from the usual one. I think we will see that at bottom the emptiness charge is not really concerned with the universal law formula, or any other specific formulation of the moral law. At most the apparent "emptiness" of the universal law formula serves in Hegel's mind to confirm a criticism he holds quite independently of any reflections on this formula. Instead, we will see that the real target of the emptiness charge is the Kantian conception of the good will and the moral worth of actions.⁴

§ 2: Kant on Duty and Moral Worth

Kant distinguishes an action which is merely "according to duty" (*pflichtmässig*) from an action which is done "from duty" (*aus Pflicht*). He insists that only actions done from duty have moral worth, and only such actions exhibit a good will, which is the only thing in the world or beyond it

which can be called good without qualification (G 397–399/13–16; KpV 81/84; TL 389/50). To do an action from duty, Kant explains, is to do it out of respect for the moral law, rather than from any inclination or from any liking for the actual, expected or intended consequences of the action (G 399–401/16–17). And Kant makes it explicit that this entails that dutiful actions done from feelings of love and sympathy, though they may be fine (*schön*) and amiable (*liebenswert*), are devoid of moral worth every bit as much as actions done from mere self-interest. (KpV 82/85; cf. G 397–399/13–16) In the case of actions where both duty and inclination speak in favor of the same course of action, it makes an important moral difference for Kant whether we act from duty or from inclination. Kant holds that in such cases we need not forego the satisfaction of our inclination, and we may even have their satisfaction as part of our *end*. But as far as our *motivation* in the act of doing our duty is concerned, we ought to “abstract” (*absondern*) ourselves from all incentives of inclination, so as to act solely from duty, and not from inclination. (TP 278–279/63–64) What makes the motive of duty or respect for the law wholly distinctive for Kant is that it alone is capable of determining our will *a priori* and independently of natural impulses. This means that it is only in actions done from duty that we exercise our freedom, our capacity to act autonomously as beings independent of and superior to the natural or sensible world. (KpV 86–87/89–90)

Kant does not think that absolutely every action we perform must be done from duty, since he does not think that every action is even a candidate for moral worth. An action is a candidate for moral worth only if duty requires it, or if we look at its performance as a case of refraining from some other specific action which is contrary to duty. In many cases, however, we have a choice between two or more permissible actions, which we inevitably (and for Kant quite legitimately) make on grounds other than duty. Thus to want every one of our actions to have moral worth would be to want (in Kant’s words) to “strew all our steps with duties,” a wish whose fulfillment, according to Kant, would turn the “dominion” (*Herrschaft*) of virtue into a “tyranny.” (TL 409/71)⁵

Kant also does not think that in cases where duty bids us do something it is morally required of us that we act *solely* from duty. Instead, his view is that it is our duty to strive to make the thought of duty the sufficient motive of our will, and that we may fulfill this duty even if this striving is not perfectly successful.⁶ But Kant does hold that perfect virtue, the goal after which we do have a duty to strive, consists in performing morally lawful actions solely or purely from the motive of duty without the need of any co-operating inclinations. (TL 391–392/52–53; KpV 84–85/87–88; R 30/25)

For this reason, he says that all virtue is founded on "apathy," the freedom from all affects which might interfere with the influence of the moral law on us. (TL 407-408/70-71) Kant admits that people often need the co-operation of affects and inclinations if they are to act according to duty. But he sees this need, and those actions which are according to duty but done not purely from duty, as exhibiting the "impurity" of the human will, the second of the three degrees of radical evil in human nature. (R 29-30/25)

To some of his contemporaries, such as the poet Friedrich Schiller, Kant's views on these matters seemed unduly austere.⁷ Schiller thought that the sublimest character was one characterized by "grace" (*Anmut*), one whose inclinations themselves were so formed as to be spontaneously in harmony with morality. Accordingly, Schiller thought that a dutiful action performed by a person with grace, and motivated by a morally agreeable inclination (such as love) is even more worthy of admiration than the same action would be if the agent had to be self-constrained to it by the thought of duty. Self-constraint for Schiller lends "dignity" (*Würde*) to an action, but dignity is a moral quality less sublime than grace.

Under Schiller's influence, the young Hegel criticized Kantian "morality" (*Moralität*) in his unpublished 1798 essay, "The Spirit of Christianity and its Fate." In the spirit of Kant's *Religion Within the Bounds of Mere Reason*, Hegel's early writings consistently attack "positive" religion, religion based on authority rather than reason; and the "Spirit of Christianity" begins with such an attack on the spirit of self-alienation and unfreedom attendant upon the positivity of Judaism, with which the spirit of Jesus is to be contrasted. But then in a striking passage Hegel goes on to turn the same criticisms against Kantian morality, and specifically against its opposition between moral reason and sensuous inclination. Hegel contrasts the victim of positive religion ("the Tungu shaman, the European prelate, the puritan") with the Kantian who obeys his own command of duty. Between the two, Hegel says,

the difference is not that the former is in bondage while the latter is free; instead, it is that the former has his lord outside himself, while the latter carries his lord within himself and is in bondage to himself. In relation to the particular, to derives, inclinations, pathological love, sensibility, or whatever else you call it, the universal is necessarily and eternally something alien and objective; an indestructible positivity remains, which fills us with indignation because the content received by the universal command, as a determinate duty, contains the contradiction that it is simultaneously limited and universal. On account of its form of universality, it makes the hardest pretensions for its one-sidedness. Woe to those human relations which are not found directly in the concept of duty! For because it is not merely the empty thought of universality but must display itself in an action, this concept excludes or dominates all other relations. (TJ 323/ETW 211-212)

According to the young Hegel, genuine freedom and goodness of will are to be found in "love," the spontaneous harmony of reason and inclination. In contrast with love, morality is "hypocritical" or "pharisaical." It demands that we view our deeds reflectively as "duties," disturbing the spontaneous harmony of reason and sense and thus rendering the spirit of the action impure; and then it falsely gives credit for the good deed not to the spirit of love through which it was done, but to the subsequent reflective thought of its conformity to duty. (TJ 332-333/ETW 220)

§ 3: *The Emptiness Charge*

"The Spirit of Christianity" contains the first statement of many criticisms Hegel will later bring against morality: its tendency to hypocrisy, its misguided criticism of actions in which agents satisfy their particular individuality, its fixation upon an "ought" which can never be transformed into an "is." Notably absent from the list of accusations is the "emptiness" charge. Yet at the end of the passage I have just quoted, Hegel comes tantalizingly close to the emptiness charge. For there Hegel takes it for granted that the moral law has a "content" and commands "determinate duties"; but he insists that the moral law contains an "indestructible element of positivity" which "fills us with indignation" because its "content," while claiming "universality," is "limited" and "one-sided." What fills Hegel with indignation is the "positivity" of this content, its arbitrary and unjustifiable inclusion of certain actions and human relations at the expense of others. But to say that the content of the moral law is "positive" is not a far step from saying that any content given the moral law is arbitrary, and that the moral law, regarded simply as a law having "universality of form," has no rational content of its own.

Hegel takes this further step in two of his earliest writings from the Jena period: *The Difference Between Fichte's and Schelling's System of Philosophy* (1801) and *Faith and Knowledge* (July, 1802). In both essays, Hegel is oriented more to Fichte's moral philosophy than Kant's, but apparently believes that his criticisms apply equally to both. One striking feature of these criticisms is their close association with a Schillerian attack on the Kantian-Fichtean opposition of duty to inclination. For Fichte, he says,

'We obey ourselves' means 'our natural inclination obeys our ethical law'. But in the aesthetic intuition of nature as the expression of the inner fullness and force of the body, there occurs no such separation of obedience as we find in this system of ethics. In this self-obedience we intuit natural inclination as bounded by a neighboring reason, drive is subservient to the concept. The necessary viewpoint of this ethics, instead of being aesthetic is exactly one which exhibits a distorted, anxious, oppressed form, or ugliness. (D 92-93/153-154)

Because "the concept" is divorced from everything contingent, it remains only a "formal concept," which is "empty"; consequently, there is nothing to decide questions of duty except "arbitrariness" (*Willkür*). (D 89/150)

Equally striking, however, is that in these criticisms it is quite clear that Hegel is *not* claiming that Kant and Fichte have unfortunately formulated their moral principles so that they happen to be empty of content.⁸ Instead, he is claiming that no contentful moral principle is consistent with the Kantian-Fichtean conception of the morally good will. As Hegel says in *Faith and Knowledge*, "the emptiness of the moral law" follows from the "emptiness of the pure will." (GW 426/184) Hegel's basic complaint against Kantian-Fichtean morality is still that it divorces reason from sense, or (as Hegel likes to put it) "universality" from "particularity." Only now the charge is that the Kantian conception of the pure will so isolates the motive of duty from everything that is in any way contingent or particular that it leaves the moral law necessarily devoid of content.

The same idea is expressed quite clearly in the *Natural Law* essay of November, 1802: Kantian practical reason, Hegel asserts, "Is the complete abstraction from all material of the will; through a content, a heteronomy of the power of choice is posited." (NR 461/76) Only now (and henceforth), Hegel does as he did in the *Difference* essay and frames the emptiness charge as part of a more general critique of the Kantian conception of reason. Kant, he says, conceives "practical reason" as an "abstraction" from all "matter" or "content" of the will, having no content but abstract identity. Consequently, he says, Kantian morality has nothing but the principle of contradiction to serve it as a criterion. Hegel does not begin with Kant's universal law formula, interpreting (or misinterpreting) it as proposing noncontradiction as the sole moral criterion. Instead, he begins with the idea that Kantian-Fichtean practical reason consists in the autonomous ego conceived as "the moment of pure unity" which aims at "limiting and dominating sensibility" (or "the moment of multiplicity") NR 458/74); and then he argues that the autonomous self, so conceived, contains merely "an analytic unity," so that the only possible criterion available to it is noncontradiction. (NR 460/76) It is only then, and in light of these conclusions about what criterion Kant has available to him, that Hegel interprets the universal law formula as demanding no more than that the content of the will should be noncontradictory. (NR 459/76-77)

The emptiness charge, as we find it in Hegel's later writings, is simply an echo of this argument of the *Natural Right* essay. The Berlin *Encyclopedia* derives the emptiness charge from the claim that Kant never successfully distinguishes reason from understanding, so that Kantian reason must always receive its content from outside, and supplies nothing but a

formal unity to experience. (EL § 52) And from this he draws the conclusion that noncontradiction is the only moral criterion Kant has available: "For that which practical thought makes its law for the criterion of its determination within itself, there is again *nothing to hand* except the same abstract identity of the understanding, that there is no contradiction in the determination." (EL § 54, emphasis added) *The Philosophy of Right* criticizes Kant for remaining at the merely "moral" standpoint of "duty for duty's sake," and claims that from this standpoint the only "determination of duty" is "the lack of contradiction," a criterion which allows for the justification of even the most unjust and immoral actions. Only then does Hegel allude to what he calls "the *further* Kantian form, the capacity of the action to be represented as a universal maxim." Of this formula Hegel asserts that although it is a more concrete representation of duty, it contains no principle beyond the absence of contradiction. (PR § 135R, emphasis added) Though this last claim may be false, its truth is not essential to Hegel's basic criticism, which is that a morality which makes the motive of pur duty the criterion of moral worth is not *entitled* to employ a principle with any content beyond the requirement of noncontradictoriness.

§ 4: *Hegel's Argument*

The question now is why Hegel should have thought this. Hegel's writings after 1802 unfortunately do not give us much help, since they either leave Hegel's reasoning on this point entirely opaque or else follow the *Natural Right* essay by subsuming it under the Hegelian slogan that Kant fails to distinguish reason from understanding. One difficult passage from *Faith and Knowledge*, however, perhaps provides us with a clue. This is the earliest text in which Hegel uses the term "ethics" (*Sittlichkeit*) in the way characteristic of his mature writings, favorably contrasting it with "morality" (*Moralität*). From the moral standpoint, he says,

the content of the concept is some reality posited in an ideal form as end and intention, some empirical given; only the empty form is the a priori But a true ethics, namely a true identity of the universal and particular, or matter and form, are not thought of here. Because the emptiness of the pure will and the universal is the truly a priori, the particular is something absolutely empirical. What right and duty are in and for themselves—to give a determination of this would be contradictory. For the content at once cancels the pure will or duty for duty's sake, and makes duty into something material. The emptiness of the pure feeling of duty and the content continually cross each other up [Consequently], if we do not presuppose a true ethics, then since morality consists in form, we are free to elevate every moral contingency into the form of the concept and procure a justification and a good conscience for what is unethical. (GW 426–427/183–184)

Here Hegel seems to be claiming that if the pure moral disposition consists in acting from the pure thought of duty, then any "content" would destroy the moral purity of the will. Or as Hegel puts the point later in *The Phenomenology of Spirit*: "Since the *determinate* duty is an end, it has a content, its *content* is a part of the end, and so morality is not pure." (PhG para. 630) Suppose, for instance, that I try to think of a certain kind of action, such as keeping a promise or helping another in need, as my duty. To do this specific duty, Hegel seems to be saying, would be to act not from duty alone, but also from a more particular motive, that of keeping *this* promise or helping *this* person. And that would cancel the purity of my will as it is conceived of by the Kantian. Hegel's contention is that to apply any determinate criterion of duty is to think of one's action as one's duty because it has certain determinate empirical features; and to perform it because it is a fulfillment of *that* duty is to perform it because it has *those* features. The point could also be put by saying that if there are to be determinate duties, then to act from duty is to act from those duties, and to act from those duties is always to act from empirical motives, motives other than the pure motive of duty. But this means that Kantians cannot allow themselves to apply any criterion of duty, since the use of such a criterion would mean that I am performing the action not merely from duty but also because it has whatever features satisfy the criterion. From this Hegel concludes that the moral standpoint precludes any objective criterion for moral action, and so is capable of procuring a good conscience for what is unethical just as much as for what is right and good.

To this argument there seems a very natural Kantian reply. To act from duty is to perform one's action because it satisfies the categorical imperative in one or another of its formulations. If promise-keeping is entailed by some formulation of the categorical imperative, then to act from duty entails keeping promises, so that it seems not only possible but necessary to acting from duty that one perform acts with the empirical features which make them acts of promise-keeping. These empirical features are not the motive of the act, but it is a corollary of acting from the categorical imperative that one should perform acts with those features. If Hegel is already supposing that the categorical imperative is incapable of identifying the empirical features of actions which constitute conformity to duty, then he is just bringing up the emptiness charge on the usual interpretation, but without arguing for it.

This reply, however, misses the point of Hegel's criticism. For as we have seen, the point is not that the categorical imperative does not happen to have a content; it is rather that Kantians cannot employ contentful principles and perform contentful actions without compromising what they

regard as the purity of their wills. Hegel's claim, in other words, is that to act from duty is necessarily to act from those empirical features which the act has, even if one derives those features from some moral principle. Further, his contention is that to act in this way is also to act from something which has the stamp of "particularity" on it, it is to act from empirical inclinations, interests, drives, passions. To act from a contentful principle is always to act from empirical motives; and so the only way to avoid acting from empirical motives would be either not to act at all, or else to act in some determinate way (any determinate way will do) while thinking of oneself as acting from a principle with no content. Hegel's argument here is perhaps most explicitly stated in *The Phenomenology*: According to the moral world-view, he says,

"I act morally insofar as I am *conscious* of performing duty only, and not *something else*, and this means in fact *when I do not* act. when I actually act, I am conscious of an *other*, an *actuality* which is at hand, and of an actuality I will to produce; I have a *determinate* end and fulfill a *determinate* duty. There is something in it which is *other* than pure duty, which alone ought to be intended." (PhG para. 637)

The crucial thesis here is that to pursue an end or act on a contentful principle is necessarily to act from something other than pure duty, that it is to act from empirical desires. This is a point Hegel often makes in a very abstract way by insisting on the unity or identity of the universal and the particular (EL §§ 163–164), or by claiming that the universal is actualized only in the particular. (VG 85/72) As applied to moral psychology, this means that duty or the moral law ("the universal") can be carried out or actualized only through the medium of "the particular"—through the agent's empirical desires, drives and inclinations. (PhG para. 622)

Hegel suggests at least two quite distinct sorts of reasons for this thesis. Sometimes he appears to be making a point about human nature, the point that people are not in fact disposed to carry out substantial projects or realize rational goals unless they are driven to do so by "interest," or "self-satisfaction," or moved at the level of their sensuous nature by elemental drives or passions: "Nothing great," he says, "has ever been accomplished without passion." (VG 85/73; EG §§ 474–475, PR § 121) Such statements may have an air of worldly wisdom about them, and they may even be true; but they do not really go very deep or pose a serious challenge to Kantian morality. For if Hegel's claim is only that human beings are so disposed that they will in fact do nothing unless empirically motivated, then that would not count as any sort of argument that moral worth should be accorded to empirically motivated actions, nor would it show that there is anything illegitimate in the moral demand that we should strive to act from the pure

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motive of duty alone. It would only confirm Kant's own suspicions, in his more cynical moods, that even the best human will is often impure in its motivation, so that perhaps none of our actions really possesses moral worth.

Sometimes, however, Hegel suggests that all action is mediated by inclination simply because every action has an end, and because the setting and pursuing of any particular end necessarily involves acting from empirical drives and inclinations. Recall the passage quoted earlier from *The Phenomenology*: "Since the *determinate* duty is an end, it has a content, its *content* is a part of the end, and so morality is not pure." (PhG para. 630) Or as he puts it much later in the Berlin *Encyclopedia*:

An action is an end of the subject, just as it is its activity of carrying out this end. There is an action at all only through the fact that the subject is in it, i.e. through its interest, even in the most unselfish action. . . . [According to some people] drives and passions are opposed as a whole to duty for duty's sake, to morality. But drive and passion is nothing but the vitality of the subject, through which it is in its ends and their execution. (EG § 475R)

Every meaningful action, Hegel maintains, is itself one of the agent's ends, since in our actions we seek to express and vindicate our own agency through the accomplishment of our other ends. But the vindication or confirmation of my agency is always an aspect of my particular good, my subjective interest or (as Hegel likes to put it) my "self-satisfaction." From this Hegel concludes that the ethical worth of an action is not in the least diminished by the fact that it is performed from inclination or passion, since this it is an inevitable fact about agency that this should be so. Instead, "the ethical has to do with the content, which as a *universal* is something inactive, and has its activation in the subject. The fact that this content is immanent in the subject is interest, and when it lays claim to the whole of the effective subjectivity, it is passion." (EG § 475R)

This is an argument which the Kantian must take more seriously. For Kant himself holds that every action has an end or purpose, acts done from duty every bit as much as acts done from immediate impulse or prudential calculation. The Doctrine of Virtue even maintains that there are ends which are duties, ends which it is my duty to have, and that these ends play the chief role in determining our ethical as opposed to our juridical duties (TL 381/38). Thus Kant agrees with Hegel that there can be no application of the moral law, no specification of what our duties are, without the specification of the determinate ends of dutiful actions. Kant also holds that an act is devoid of moral worth if its motive consists in the agent's desire for the end of the action; acts so motivated are done from what Kant calls a

“material principle”—such principles, he says, are without exception empirical and fall under the principle of self-love or one’s own happiness. (KpV 21–22/19–20) An act whose motive coincides with its end is therefore necessarily heteronomous, done from inclination or self-interest and not from duty. If all acts were necessarily of this kind, then there could be no such thing as an “autonomous act” in Kant’s sense of the term, and the whole of morality would be nothing but a cobweb of the brain. If, as Hegel contends, there could be no act in pursuit of a specific end which does not take that end as its motive, then Kant would have to admit that no determinate duty could ever be carried out from the motive of duty.

But Kant thinks it is a mistake to suppose that the motive of an action inevitably coincides with its end. An act done from duty has an end, which sometimes even includes the satisfaction of the agent’s inclination or particular interest. And of course Kant never claims that the agent has to forego this self-satisfaction in order for the action to have moral worth. But this end, which Kant calls the “matter” of the agent’s maxim, is not the motive of an action done from duty; rather, the motive in this case is the “legislative form” of the maxim, the fact that the maxim can be willed as a universal law. (KpV 26–29/26–29)⁹ If Hegel’s emptiness charge is to be made out against Kant, then Hegel must show us what is wrong with the view that our pursuit of an end might be motivated not by our empirical attachment to its achievement but solely by the legislative form of the maxim on which we act in pursuing it. He must substantiate the claim that the act of setting and carrying out an end is necessarily an act of the agent’s “particularity,” its empirical interests, inclinations or passions, and that such an act cannot be performed directly by the agent’s legislative reason without their assistance or mediation. In short, Hegel must show why Kant is wrong to think that pure reason can *of itself* be practical. (KpV 41–42/43)¹⁰

§ 5: Hegel’s Theory of Moral Action

Hegel certainly did not succeed in doing this in the years 1798–1802, the period in which he was bringing the emptiness charge to articulation in his writings. Through most of his career, in fact, the most we find by way of argument on this point is its derivation from the dubious thesis of speculative logic that the universal is “identical” with the particular and receives “actuality” through it. Not until the Heidelberg *Encyclopedia* of 1817 does Hegel begin to hint at a theory of moral action which might justify the claim that the setting and execution of a determinate end requires action from interest, inclination or passion. (EG §§ 417–420) And it is only

in the *Philosophy of Right* of 1821 that such a theory receives any real articulation. By this time, however, Hegel has ceased thinking of "morality" merely as a nickname for a false or limited standpoint, or for the Kantian-Fichtean moral theory. Hegel has now developed his own standpoint of "morality," with its own positive conception of moral agency and responsibility, the moral good and the morally good will. "Morality" is no longer merely a false substitute for "ethics"; it has come to represent one of the essential positive moments of modern ethical life.¹¹

For the mature Hegel, the standpoint of morality is the standpoint of the free subject (PR §§ 105–106): the subject's task is to actualize itself by raising its particularity to universality, or, in more Kantian language, making its particular willing and action conform to the universal law of reason. For Hegel this conformity can be judged only with respect to deeds in the external world as an expression of my volition, and deciding how far that expression conforms to the standard of universality which it is my moral concern to actualize. From the moral standpoint, it must be determined which objective occurrences my will is responsible for, and then how far the relation of my will to these occurrences constitutes the actualization of the universal in my subjective volition.

Any deed of mine changes the external world in some way, or at least contributes to an indefinite multiplicity of factors which bring about such a change. But my will is morally responsible for what happens in the world only to the extent that the objective occurrences can be said to belong to my end (*Zweck*). (PR § 115) According to Hegel, they so belong to the extent that they lay in what Hegel calls my "purpose" (*Vorsatz*). (PR §§ 117–118) The consequences of my action lying within my purpose depend on my representation or conception (*Vorstellung*) of the circumstances, "those presuppositions which [the will] knew in its ends." (PR § 117) Hegel regards this as including all those consequences which constitute "the genuine immanent shape of the action" because they "manifest its nature." (PR § 118R) Thus according to Hegel Oedipus was causally responsible for his father's death, which belonged to his deed; but he cannot be charged with parricide, because it did not lie in his purpose to kill his father, nor did parricide belong to the nature of his action of defending himself in the quarrel with the old man at the crossroads. (PR § 117A) Likewise, Hegel claims that a hunter who shoots in the darkness at what he thinks is an animal and hits a man may be guilty of manslaughter but not of murder. (VPR 3: 338, VPR 2: 413; cf. VPR 17 78) On the other hand, an arsonist is chargeable with the destruction and death which result when his fire spreads to buildings

beyond the one he wanted to burn down, because the possibility of such a mischance belongs to the nature of his action. (PR § 119A)¹²

Because the moral standpoint is the standpoint of the self-conscious subject, the moral judgment of my action is concerned not only with what I did and the fact that I knew what I was doing, but also with the subjective meaning my action had for me. And because my action is imputable to me as a thinking being in terms of my conception of what I was doing, moral judgment should focus on this conception, the “universal quality” (PR § 120) or “universal nature” of the action as I knew it (PR § 118A). This aspect of the action is what Hegel calls the agent’s “intention” (*Absicht*). (PR § 119) Hegel points out that etymologically, the word *Absicht* (“looking away”) implies the abstraction of a particular side of the concrete deed. (PR § 119R) Hegel therefore thinks that the agent’s intention is the universal aspect of the action which constitutes its “subjective essence” and explains *why* the agent did it. (PR § 121) To put the point in a distinctly non-Hegelian philosophical jargon, the intention is the “desirability characterization” of the action which exhibits its appeal to the agent. Or again, we could characterize the intention of an action as including all those features of it which constitute *reasons* this particular agent had for doing it, if by “reasons” we mean “internal” reasons, that is, reasons which *explain* why the agent did what she did.¹³

Hegel’s theory of moral action, then, concerns itself with what I did, whether I knew I was doing it, and the aspect or aspects of it which I intended.¹⁴ The two main factors are what actually occurred when I acted, and my way of conceiving of those occurrences. It is striking that motivation proper plays virtually no role in Hegel’s theory of action. This is because Hegel’s theory of action in effect replaces motives with internal reasons; instead of asking what psychic factors motivated me, Hegel’s theory asks for an explanation of my action in terms of the reasons I had for doing what I did. And on Hegel’s theory, to say that I acted “from duty” or “for duty’s sake” can mean only that the dutifulness of my action belongs to my intention, counts as a universal description under which I bring my action, and which explains my acting in the way I did.

The published text of the *Philosophy of Right* contains no positive account at all of what motives are; for such an account, we must refer to two Additions drawn from Hegel’s lectures of 1822–1823 (PR §§ 106A, 121A; cf. VPR 3: 330–331, 373–374). Both Additions emphasize that it is exclusively from the standpoint of morality that motives of an action are of interest. PR § 106A appears to identify the “incitement” (*Triebfeder*) of an action with its intention (*Absicht*) or its “principle” (*Grundsatz*). PR § 121A is more specific, describing the “motive” (*Beweggrund*) of an action

as "the universal in the purpose and the particular of the intention." The phrase "universal of the purpose" is precisely Hegel's formula for the intention (PR § 119), so the import of PR § 121A seems to be that the motive of an action is a certain aspect or side of the intention, namely its "particular" side.

Relating this to PR § 121 itself, it seems evident that Hegel is identifying the "motive" of an action with what he there calls the action's "particular content" or "moment of particularity," through which the action has "subjective *value, interest* for me." (PR § 122) An action's "motive," then, is just the agent's interest in it, the fact that success in the action will confirm or vindicate the agency of the individual who performs it. Hegel emphasizes that "interest" in this sense is present even in the most unselfish actions, since it derives from the my awareness of the confirmation of my agency in a successful action, whether the action itself is oriented to my own good or not. (EG § 475) But "interest" does in Hegel's view belong to the agent's well-being or happiness, along with the satisfaction of the agent's needs, inclinations, passions and so on. (PR § 123)

Kant and Hegel agree that every action has an end, and that an action performed on account of the appeal of this end to the agent is an act done from inclination and not purely from duty alone. But the appeal of an action's end to the agent is surely one of the features which make the action desirable to the agent. Consequently, it must belong to the intention of the action. That is why Hegel thinks that the setting and pursuing of an end necessarily involves the agent's particularity, interest or self-satisfaction, the element of empirical desire which the Kantian thinks must be excluded from the will if it is to be a good will. The Kantian good will is therefore necessarily devoid of content because it cannot be directed to any determinate end without sacrificing its purity.

As before, Hegel's view is that reason can be practical only when it relinquishes its purity and expresses itself through empirical desires; universal ends get carried out only through the particular interests agents take in carrying them out. "The abstract universal end, insofar as it is done, since it steps into actuality, becomes a determinate end. My interest is in my doing in different ways. . . . That my well-being is my intention constitutes the scope of particularity. . . . This right lies immediately in particularity and is not for itself to be regarded as something bad." (VPR19 96-98) As if to drive the point home against Kant, Hegel identifies the "motive" of an action with precisely that "particular" side of it which is necessary for setting and pursuing an end, and which in Kant's view is to be contrasted with the "universal," with the pure thought of duty or respect for the moral law.

§ 6: *Hegel on the Good Will*

Hegel characterizes the morally good will as one which “in its insight and intention is in accordance with the good.” (PR § 131) My “insight” accords with the good if (1) I act so as to further what I believe to be good, and (2) my beliefs about the good and the relation of my action to the good are objectively correct ones. My “intention” accords with the good if (3) the goodness of what I do belongs to my intention. On Hegel’s theory of intention, the last condition is satisfied whenever I am aware of the objective goodness of my action, and this objective goodness is one of the features of the action which make it desirable for me or give me an (internal) reason to do it.

From the moral standpoint, Hegel says, an action which accords with the good can be represented abstractly as a “duty”; for this reason, Hegel agrees with Kant that a good will must do its duty for duty’s sake (PR § 133).¹⁵ But Hegel does not say, and does not believe, that a good will must do its duty *only* for duty’s sake. He regards as pernicious the attitude of the moralist who criticizes the substantively good acts of great men on the ground that in those acts the agents intended and achieved happiness, fame, honor or self-satisfaction for themselves. It is in this context that Hegel quotes the proverb “No man is a hero to his valet”—adding: “not because the man is not a hero, but because the valet is only a valet.” (PhG para. 665; cf. PR § 124R, VG 104/87–88)

Kant famously denies a good will to the shopkeeper who serves customers honestly because he finds that honesty is good business, just as he denies such a will to people who do good to others because they have an immediate inclination to make others happy and derive satisfaction from it; the actions of such people, Kant insists, have no moral worth. (G 397–398/13–14) But Kant does not mean that merely having self-interest as an incentive is sufficient to disqualify a person from having a good will and performing acts with moral worth. Instead, he requires for the moral worth of one’s action only that one should in the particular case *act from* duty rather than from these other motives, and for a good will only that the agent should so abstract from these other motives as to make the motive of duty *predominant* over them in the performance of this action.¹⁶

For Hegel, by contrast, it is sufficient for the shopkeeper to have a good will that he behaves honestly and that his “intention accord with the good.” For the latter, it is required only that the dutifulness of honest conduct should be one feature (among others) which attracts the agent to the action, and that dutifulness should appeal to the agent for its own sake—it should be “the final ground” of the action (VPR 4: 354). Thus Hegel would

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deny a good will to the shopkeeper who finds nothing attractive at all about the moral goodness or dutifulness of this policy; and a shopkeeper who cannot be relied upon to conduct business honestly is a bad man no matter what his motives or intentions may be, simply because he is deficient in the fundamental *ethical* virtue of "uprightness" (*Rechtschaffenheit*). (PR § 150) But further, to act for duty's sake is to have a "moral disposition (*Gesinnung*)" (VPR17 83, 246; cf. PR § 137), it is to perform the action "because it is good (*weil sie das Gute ist*) [or] because it is right." (VPR 4: 354) By such statements I think Hegel means that if I am to have a good will, the goodness or dutifulness of my action must not only attract me but it must attract me enough in this case to be a sufficient (internal) reason for the action. I must care enough about duty at the time I act that the dutifulness of the action by itself is sufficient to account for my performance of the action.

Comparing Hegel's theory of the good will with Kant's, we see that Hegel's theory makes the good will and morally worthy actions essentially harder to acquire in one way, but essentially easier in another. Hegel requires that our "insight accord with the good," that is, that we act from objectively correct moral beliefs (PR § 140R), while Kant requires only that we sincerely follow our conscience. (TL 401/61) But to have a good will it is not necessary in Hegel's view that the moral goodness or dutifulness of one's act should predominate over other motives, nor is it necessary to the moral worth of an action that it should be done solely or mainly from duty. The goodness or dutifulness of what I do must of course attract me enough to account for my performance of the act. But where it does so, the presence of other, attractive features of the act, and the relative strength for me of these non-moral incentives in comparison to the moral ones, in no way detract from the moral worth of my act and the goodness of my will.

Kant identifies the goodness of my will with the striving for complete "purity" of will. For Kant, my will is "pure" only where "no incentives of inclinations are the determining grounds influencing an action done as a duty." (KpV 160/165) The pure will is not necessarily one which lacks non-moral *incentives* to the dutiful action, but it is one which succeeds in abstracting itself from these incentives as far as the motivation of the act is concerned. The pure will, moreover, is one in which the moral motive is not only strong enough to account for the agent's performance of the act in those particular circumstances, but also strong enough that the agent would still perform the dutiful action even if every conceivable non-moral incentive stood opposed to doing it. Thus Kant invites us to imagine an honest

man asked to give false testimony against an innocent and powerless person. First he is offered bribes and inducements to join in the unjust calumny. When he declines them, he is threatened with the loss of the affection of his friends and family, with the deprivation of his every happiness, even with the loss of his freedom and his life itself, if he refuses. True purity of will is to be found only in those who do their duty in such a way that they would still do it even in such an extreme situation. (KpV 155–156/159–160) For Kant, we can have a good will without *having* a pure will in this sense; but to have a good will we must *strive* to the best of our ability after such purity of will in every act where duty is at stake.

Hegel demands no such acts of abstraction, no such fanatical purity, not even the striving after it. For him, it is enough for a good will that I do my duty and that my disposition to do it in this case is strong enough to account for my dutiful action under the present circumstances. Beyond this, it makes no difference whether I would still do the action even if sorely tempted not to do it; and it is an unanswerable question, or at any rate a morally irrelevant one, whether it is duty or non-moral motives which are said to bring about the act in me.

For Kant whether or not one acts from duty is morally crucial because the autonomy or heteronomy of one's actions depends on how they are psychologically *caused*. Kant's strenuous denial that our free acts cannot be the result of natural causality should not blind us to the fact that his theory of action is essentially a causal determinist one, in which every act is seen as arising from a motive either of reason or of inclination, which brings about the act according to a causal law selected by the power of choice. (R 35/30) Autonomy is, in Kant's words, "the causality of reason." (KpV 80/83) This is why Kant thinks we must distinguish having something as my end and being motivated by having it as my end. Every action has an end, but only actions motivated by a material principle are motivated by the agent's attachment to the end; and it is also possible for my pursuit of an end to be motivated by the legislative form of my maxim. This difference in motivation is a difference in the way the actions are caused. Only acts done from duty have their cause wholly in our pure reason, and only they are truly autonomous; acts done from other motives exhibit the susceptibility of our power of choice to alien influences, and so they are heteronomous. The moral worth of an act for Kant depends accordingly upon the causal strength of the motive of duty in the act's production, as compared with other motives the agent has, just as the goodness of a will depends on the agent's disposition to acts whose sole or dominant cause is the motive of duty. (R 28–30/23–6) And Kant holds that we cannot judge the moral worth of

our actions because he thinks that the causal mechanisms which produce them belong to the intelligible world, and are therefore unknowable by us. Thus Kant denies that experience enables us to cite even a single sure example of the disposition to act from duty, on the grounds that we can never be absolutely certain that some "secret impulse of self-love, pretending to be the idea [of duty], was not the genuine determining cause of the will." (G 407/23)

From one point of view, Hegel's rejection of Kant's theory of moral worth can be understood as a rejection of the psychological determinism on which Kant's theory is based. For Hegel, the will has from nature a set of drives or original inclinations (PR § 11), but in relation to them it is also a "pure indeterminacy" which derives its contents not from nature but from an act of self-determination. (PR §§ 5–7) On account of the moment of pure indeterminacy in the will, Hegel says that "I can abstract from every determination," I am "unrestricted possibility" (PR § 5R), "I can do anything, omit anything." (VPR 3: 111, VPR 4: 112) What Hegel means by this, I think, is that whatever limitations there may be on our possibilities to act, they do not include the *contents* or *determinations* of our wills, that is, our drives or desires. Our desires may determine what we *in fact* do, but not by limiting in any way what we *can* do. Over against any or all of them, we remain wholly free to act contrary to their dictates. And since causes necessitate their effects, Hegel denies that the will stands in any causal relation to its motives or to the other circumstances which determine it. (NP 222; cf. EL § 195,A)

The idea that the will is free in relation to its desires and so is not causally determined by them makes Hegel look very much like an incompatibilist-indeterminist on the issue of free will. Yet it is sometimes held that Hegel is a compatibilist or soft determinist.¹⁷ This view is sometimes based on a misreading of passages in which Hegel asserts that necessity is identical with freedom. (WL 6: 239–240/570–571; EL §§ 157–159) This is a misreading, because in such passages the concept of "necessity" is not a concept of causal necessitation but rather one of organic interconnectedness or teleological inevitability. (cf. PR §§ 267A, 269A, 270A) But there is nevertheless truth in the compatibilist interpretation of Hegel, in another way. Precisely *because* Hegel rejects psychological determinism, his theory of human agency is conceived entirely in non-causal terms, and consequently his theory of moral responsibility would be entirely compatible with any form of physical determinism which allowed that, in some appropriate sense of 'can', we always can act against our drives, desires, motives and so forth. Also strikingly compatibilist in character is

Hegel's theory of moral responsibility. Although Hegel believes that I can do otherwise than I do, this belief plays no role in his theory of responsibility. For Hegel, I am responsible for doing a certain deed under a certain description if I in fact did the deed, knew I was doing it under that description and intended to do it under that description. In principle these conditions could all be satisfied even if there were no possibility that I could have done otherwise.

This means that Hegel's rejection of Kant's psychological determinism is not his basic reason for rejecting Kant's theory of moral worth. Given Hegel's theory of the good will, even if our actions are involved in a physical or psychological determinism, their causes are irrelevant to their moral worth, since that rests entirely on the nature of the act, the agent's knowledge, and the agent's intention, that is, the features of the act which the agent regards as making it desirable enough to do. The crucial point is not that Hegel rejects the psychological determinism presupposed by Kant's theory, but that he regards the causal antecedents of acts as irrelevant to their moral worth and to the goodness or badness of the will which performs them.

§ 7: *The Good Intention*

When Kant's shopkeeper deals honestly with his inexperienced customer, he is aware of at least two features of this action which recommend it to him: (a) by helping to protect his reputation for honesty, honest dealing will be profitable in the long run; and besides that, (b) honest dealing accords with the good, it is his duty. Let us suppose that he is both morally disposed enough and concerned enough for his reputation that under the circumstances either of these incentives would be reason enough for him to deal honestly. Aware of and attracted by both these features of honest dealing, the shopkeeper in fact chooses to deal honestly with the customer, though as a free agent he could have acted against all these reasons and cheated the customer. That, as Hegel sees it, is an exhaustive report of the morally relevant facts of the case. And they are sufficient for the shopkeeper to have a good will and his act to have moral worth.

If Kant now asks which of the two motives caused the shopkeeper to do act according to duty, or wonders in what proportion each contributed to it, or which motive was the strongest in producing it, or if he conjectures what the shopkeeper would do if threatened with torture and death unless he cheats the customer, then Hegel's response is simply to reject all these questions as having no answers, or at least no morally relevant answers. Kant himself agrees that the answers to all such questions are unknowable, since

the causality which produces our actions belongs wholly to the intelligible world.¹⁸ Hegel merely draws the quite sensible conclusion that if such matters are necessarily nothing to us, they cannot possibly concern us as moral agents and we have no business building our concept of moral worth upon them. Consequently, the moralist's anguish about whether he has "done the right deed for the wrong reason," together with the whole grand Kantian struggle of duty with inclination in the shopkeeper's soul, carried on somewhere in the intelligible world with God as the sole witness to the combat—this entire drama is a fiction, a fantasy, simply a product of the moralist's unhealthy imagination.

For Hegel, what is unhealthy about the Kantian moralist's fantasy is that it "presupposes a gap (*Bruch*) between what is objective in the action and what is inner, subjective in its motives." (PR § 121A) By contrast, Hegel recommends the "higher *moral* standpoint which finds satisfaction in the action itself" and eschews the imaginary satisfaction to be derived from blaming one's failures on the niggardly provision of a stepmotherly nature. Actions, of course, are not mere events; they must be understood in light of their subjective intention. Yet Hegel denies that the subjective intention is anything apart from the series of actions in which it is displayed: "What a man does is to be considered not in its immediacy but only as mediated through his inwardness and as a manifestation of his inwardness. Only here we must not overlook the fact that the essence and the inwardness confirm themselves as such only by stepping forward as appearance." (EL § 112A)

"What the subject is," Hegel insists, "is the series of his actions. If these are a series of worthless productions, then the subjectivity of his willing is just as worthless. But if the series of his deeds are of a substantial nature, then so it is also with the inner will of the individual." (PR § 124; cf. EL § 140A) Or as he puts it in the *Phenomenology*: "The truth of the intention is only the deed itself." (PhG para. 159) There is no room in Hegelian morality for a good will which strives after the good but unhappily never shows itself in substantially good accomplishments, just as for Aristotle there is no genuine virtue or excellence which does not show itself in successful action.¹⁹

Hegel's fundamental concern in rejecting the Kantian conception of the good will is to prevent our conceiving of the good will as an essentially alienated form of human existence, cut off both from its own sensuous nature and from the real world in which it acts. Just as the Kantian picture of a struggle of motives in the intelligible world alienates our practical reason from our self-satisfaction, so in Hegel's view the Kantian idea that the moral worth of willing and acting does not depend on their results

alienates moral agents from their existence in the real world and from their concerns with it. This idea makes us regard the essence of our moral action itself as occurring in an alien world, a beyond, so that our noblest actions and accomplishments in the real world are made to seem to us at best as by-products of moral willing, whose worldly splendor may always be nothing more than dazzling costume which cloaks a bad will.

To Hegel, it is only too obvious how the Kantian picture appeals to the envy of those who never accomplish anything, and who are looking both for a way of denying admiration to good wills and good actions in others, and for some saving interpretation to place on their own worthless deeds and failed projects. If such people have the good fortune to find in themselves no passion or interest in life more powerful than the pale thought of moral duty, then they may always console themselves with the thought that despite their outward failure, they may nevertheless possess inwardly a good will which, though wholly invisible to human eyes, shines in the intelligible world like a jewel, having its full value in itself.

§ 8: *Moral Freedom and Self-Alienation*

Of course Hegel does not deny that people can conceal their intentions, and that good intentions can sometimes accidentally fail to achieve good results. (VG 66/57) He proposes to judge an agent's intention not by the fruits of an isolated action but by the worth of the whole series of actions in which this intention is displayed. Even so, it is a hard saying that I am nothing but the series of my actions. For this amounts to a direct rejection of the powerful moral impulse to believe that in regard to moral goodness of will there can be no such thing as good or bad luck, that each person's moral worth depends entirely on that person, that the goodness of my will is wholly and solely up to me.

This moral conviction that the worth of a person must be beyond luck is, to begin with, Kant's deepest reason for wanting to measure the will by its purity, by whether we would do our duty even in the most extreme circumstances. For it is only good luck, after all, that ever makes our duty easier to do than this. "How many people who have lived long and guiltless lives," Kant asks, "may not be merely *lucky* in having escaped many temptations?" (TL 393/52) It is responsible too for Kant's insistence that a goodness of will does not require complete purity of will, but only the utmost striving after purity. For even here, it is only striving and not success which lies wholly within our power. The same conviction is also Kant's deepest reason for holding that as free moral agents we must have an existence beyond nature, outside space and even outside time; for only in the noumenal realm are we safe from all good or ill chances.

Finally, this moral conviction is also Kant's deepest reason for insisting that there is no moral worth to actions motivated by beautiful inclinations such as love and sympathy. Against such inclinations, Kant's usual argument is that they are unreliable, and produce good actions only by chance: conformity to law achieved through fine inclinations is only "contingent and spurious, because, though the non-moral motive may now and then produce lawful actions, more often it brings forth unlawful ones." (G 390/6) But this argument is powerless against the inclinations of a person with Hegelian ethical virtue or Schillerian "grace," since to have grace is to have inclinations which are exquisitely sensitive to the demands of reason, so that they do reliably produce dutiful actions. Perhaps Kant thought such a state of one's inclinations impossible of attainment for flawed human nature; but that would be no argument against grace as an ideal to be sought after. Surely Kant is the very last moral philosopher one would expect to find complaining of a moral ideal that it asks too much of frail human nature.

Kant's real reason for denying moral worth to acts motivated by inclination is seldom made explicit, but it shows itself fairly plainly in passages such as the following:

If nature has put little sympathy in some man's heart, and if (though otherwise an honest man) he is by temperament cold and indifferent to the sufferings of others, perhaps because he overlooks his own sufferings through special gifts of patience and strength to endure them and presupposes or even demands the same in others; if nature has not made such a man into a philanthropist (though truly he would not be her worst product), would he not nevertheless find in himself a source from which to give himself a far higher worth than he could have got by having a good-natured temperament? Of course. For it is just here that the worth of character is brought to bear, which is morally and incomparably the highest of all: he is beneficent not from inclination but from duty. (G 398-99/14-15)

Here Kant contrasts qualities of temperament, such as sympathy and philanthropy, or patience and strength, with worth of character, or moral worth, which is shown only when we act from duty. And it is clear that qualities of temperament lack the highest kind of worth because they are given us by *nature*, whereas worth of character is something *we give ourselves* by using a source within us—by actualizing our transcendental freedom, exercising our capacity to act independently of all inclinations, by acting from duty. Though Kant realizes that we may have some effect on our own temperament by developing the seeds of the fine and amiable qualities nature has planted in us, he avoids Aristotle's mistake by resisting the temptation to infer from this that our temperament is something which

is up to us in the same sense that our free actions are.²⁰ For both the starting place and the ease of cultivating a fine temperament are different for different people, and not up to us. Ethical virtue or grace, therefore, cannot be the highest measure of the worth of a person, because it lies outside what is strictly up to the person; it is always to some extent a matter of luck. But moral worth, which is the incomparably highest measure of personal worth, must be wholly up to the person, and not in the smallest degree a gift of nature, a product of education, or a result of good luck.

Thus when Kant asserts that love and sympathy produce good actions only "contingently" or "accidentally," perhaps he should be understood to mean not merely that such inclinations are unreliable in producing good actions, but also that even when inclinations produce good actions in me reliably, my performance of good actions from such inclinations is always merely a piece of good luck, and thus does me no moral credit. Since my inclinations are not wholly up to me, they are not *me* at all but only part of my fortunate or unfortunate lot. Unlike my noumenally free choices, my inclinations and qualities of temperament are related to the real me only accidentally or contingently, and that is the deeper sense in which they produce good actions only "contingently and spuriously."

Kant's conception of the good will and moral worth is simply the most courageous, candid admission in the history of philosophy of what we are committed to if we hold consistently to the moral conviction that the real worth of people and their actions cannot depend on nature or luck, but must lie entirely in what is up to the agent. Kant realized like no one before or since that this conviction is deeply woven into our conception of morality, and it is a powerful source of morality's hold on us. Anyone who, like Hegel, seems prepared clearsightedly and deliberately to abandon it is bound to seem to us like someone who is ready to repudiate morality altogether.

But the problem is that this conviction, however strongly we may be tempted to it, flies in the face of the facts.²¹ In the light of Kant's theory, what Hegel made bold to stress is that the conviction can be saved only by paying the unacceptable price of self-alienation. To save it Kant must suppose that our moral selves are different from the empirical selves whose actions we will and know and care about. To preserve our true (that is, moral) selves safe from nature and fortune, Kant must exile from this self all our natural feelings and desires, and banish even the love, courage, moderation in passions, and the other qualities which the entire pre-Kantian ethical tradition counted as paradigmatic of our highest virtues. He can retain for the moral self only a single abstract and misanthropic feeling: respect for

the law, and only a single cold and (by Kant's own admission) utterly unnatural motive: the motive of duty.

What bothers Hegel about the use which envious failures make of Kantian ethics is not the fact that Kant's theory admits of hypocritical and self-serving misinterpretations—even the truest theories admit of that, as some notorious misreadings of Hegel's own moral and political views amply illustrate. The point is that this particular misuse of Kantian morality exhibits in all its neurotic ugliness the perverse flight from reality, both natural and social, both within ourselves and beyond ourselves, which belongs to the Kantian conception of moral worth even in its most authentic manifestations. Kantian morality tries to find a freedom independent of what is other than freedom, independent of nature and fortune; but it does so by fleeing from what is not freedom seeking a refuge beyond this other. For Hegel, by contrast, "the freedom of spirit is an independence of the other won not outside the other but in the other; it comes to actuality not through a flight before the other but rather by overcoming it." (EG § 382A) Freedom or autonomy for Hegel is therefore *Beisichselbstsein in einem Andern*, "being with oneself in an other," turning what is the other of freedom, whether inside or outside ourselves, and whether it be nature, or society, or luck, is not a positive manifestation of freedom. The higher moral standpoint thus finds satisfaction not in the goodness of one's will but in its substantial achievements, and it seeks not to abstract itself from its natural desires but rather to find in these desires themselves the natural vehicles of free rationality.

§ 9: Conclusion

The puzzle is: why did Hegel choose to articulate this criticism of the Kantian conception of the good will and moral worth in the form of the emptiness charge, apparently as a criticism of one particular formulation of the Kantian moral principle? The solution is to be found in *Faith and Knowledge*, where, from the standpoint of the theory of moral action which he was not to make explicit for some years, Hegel tries to imagine what it would be like to act solely from duty. Given Hegel's theory, this could only be to perform some action while bringing it under no other universal or intentional description than that it is my duty to do it. But I could do this only if I omitted to think of the act as having any determinate end, since the end of any act is that for whose sake it is done, and surely belongs to its intention if anything does. Yet any act thought of in terms of its end would be an act whose intention includes an element of subjective satisfaction, which would render my will impure by Kantian standards. Thus to have a pure will

is to act in a way that is so alienated from every concrete consideration that it must be quite indeterminate what I do. On the other hand, to act from determinate duties is necessarily to conceive of my actions in light of their determinate ends. And that will involve acting from interests and concrete commitments, to individuals, to institutions, to projects, causes, movements, commitments which display that harmony or identity of reason and inclination, universality and particularity, to which Hegel gave the name "ethics" (*Sittlichkeit*).

No doubt Hegel did think, as many others have since thought, that Kant's universal law formula is empty in the sense that it is incapable of generating any particular duties or excluding any course of action as contrary to duty. But the chief significance of this thought for Hegel was that it provided confirmation of the idea that a morality of pure duty is incompatible with the use of any criterion of duty stronger than non-contradiction. Not only is Kant committed to this absurd result—so Hegel thought—but he even exhibits this commitment himself, by formulating a moral principle whose only criterion of moral conduct is non-contradiction. I have not tried to decide whether Hegel was right in thinking that Kant's universal law formula is empty in this way. But I have tried to show that the main motivations behind Hegel's emptiness charge are independent of this question. The emptiness charge would still raise important problems for Kantian morality even if Hegel and others have all been entirely wrong in thinking that there are insuperable problems in applying Kant's universal law formula.²²

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NOTES

1. All translations from the writings of Kant and Hegel are my own. Standard English translations, where available, will be cited along with the original, with English pagination following German pagination separated by a slash (/).

Writings of Kant

GS *Kants Gesammelte Schriften*. Berlin: Ausgabe der koeniglich preussischen Akademie der Wissenschaften, 1910-. Cited by volume and page number.

G *Grundlegung der Metaphysik der Sitten*, GS 4.

- Foundations of the Metaphysics of Morals*, translated by Lewis White Beck. Indianapolis: Bobbs-Merrill, 1959. Cited by page number.
- KpV *Kritik der praktische Vernunft*, GS 5.
Critique of Practical Reason, translated by Lewis White Beck. Indianapolis: Bobbs-Merrill, 1956. Cited by page number.
- R *Religion innerhalb der Grenzen der blossen Vernunft*, GS 6.
Religion Within the Limits of Reason Alone, translated by Theodore M. Greene and Hoyt H. Hudson. New York: Harper & Row, 1960. Cited by page number.
- TL *Metaphysik der Sitten: Tugendlehre*, GS 6.
The Doctrine of Virtue, translated by Mary J. Gregor. New York: Harper & Row, 1964. Cited by page number.
- TP *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*, GS 8.
 "On the Proverb: That May Be True in Theory, but Is of No Practical Use," in Ted Humphrey (tr.): Kant, *Perpetual Peace and Other Essays on Politics, History and Morals*. Indianapolis: Hackett Publishing Company, 1983.

Writings of Hegel

- Werke *Hegel: Werke: Theorie Werkausgabe*. Frankfurt: Suhrkamp Verlag, 1970. Cited by volume.
- D *Differenz des Fichte'schen und Schelling'schen Systems der Philosophie* (1801), *Werke* 2.
The Difference Between Fichte's and Schelling's System of Philosophy, translated by H. S. Harris and Walter Cerf. Albany: SUNY Press, 1977.
- EL *Enzyklopädie der philosophischen Wissenschaften I* (1817, rev. 1827, 1830), *Werke* 8.
Hegel's Logic, translated by William Wallace. Oxford: Oxford University Press, 1975. Cited by Paragraph (§) number. Additions are indicated by an "A".
- EG *Enzyklopädie der philosophischen Wissenschaften III* (1817, rev. 1827, 1830), *Werke* 10.
Hegel's Philosophy of Mind, translated by William Wallace and A. V. Miller. Oxford: Oxford University Press, 1971. Cited by Paragraph (§) number. Additions are indicated by an "A".
- EH *Enzyklopädie der Philosophischen Wissenschaften* (1817 Heidelberg version). *Hegels Sämtliche Werke*, 4. Auflage der Jubiläumsausgabe, edited by Hermann Glockner. Stuttgart: Friedrich Frommann Verlag, 1968. Volume 6. Cited by paragraph number.

- GW *Glauben und Wissen* (1802), *Werke* 2.
Faith and Knowledge, translated by Walter Cerf and H. S. Harris. Albany: SUNY Press, 1977.
- JR *Jenaer Realphilosophie* (1805–1806), edited by J. Hoffmeister. Hamburg: Felix Meiner Verlag, 1969.
Hegel and the Human Spirit, translated by Leo Rauch. Detroit: Wayne State University Press, 1983. Cited by page number.
- NP *Nürnberger Propädeutik* (1808–1811), *Werke* 4.
- NR *Über die wissenschaftliche Behandlungsarten des Naturrechts* (1802), *Werke* 2.
Natural Law, translated by T. M. Knox. Philadelphia: University of Pennsylvania Press, 1975. Cited by page number.
- PhG *Phänomenologie des Geistes* (1807), *Werke* 3.
Phenomenology of Spirit, translated by A. V. Miller Oxford: Oxford University Press, 1977. Cited by paragraph (para.) number.
- PR *Philosophie des Rechts* (1821), *Werke* 7. Notes in Hegel's hand are indicated by "z" followed by the number of the appropriate paragraph.
Hegel's Philosophy of Right, translated by T. M. Knox (Oxford, 1967). Cited by Paragraph (§) number. Remarks are indicated by an "R", Additions by an "A". Preface cited by page number.
- TJ *Theologische Jugendschriften* (1793–1800), *Werke* 1.
- ETW *Early Theological Writings*, translated by T. M. Knox. Philadelphia: University of Pennsylvania Press, 1971. Cited by page number.
- VG *Die Vernunft in der Geschichte*, ed. J. Hoffmeister (Hamburg, 1955).
Lectures on the Philosophy of World History: Introduction, translated by H. B. Nisbet (Cambridge, 1975). Cited by page number.
- VGP *Vorlesungen über die Geschichte der Philosophie* Bd. 1–3, *Werke* 18–20.
Lectures on the History of Philosophy, translated by Elizabeth Haldane. New York: Humanities Press, 1968. Cited by volume and page.
- VPR *Vorlesungen über Rechtsphilosophie*, edited by K.-H. Ilting. Stuttgart: Frommann Verlag, 1974. Including notes and transcriptions from Hegel's lectures of 1818–1819 (transcription by C. G. Homeyer), 1821–1822, 1822–1823 (transcription by H. G. Hotho), 1824–1825 (transcription by K. G. von Griesheim), 1831 (transcription by D. F. Strauss). Cited by volume and page number.
- VPR17 *Die Philosophie des Rechts: Die Mitschriften Wannemann (Heidelberg 1817–1818) und Homeyer (Berlin 1818/19)*, edited by von K.-H. Ilting. Stuttgart: Klett-Cotta Verlag, 1983. Cited by page number.

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- VPR19 *Philosophie des Rechts: Die Vorlesung von 1819/1820*, anonymous transcription(s), edited by Dieter Henrich. Frankfurt: Suhrkamp Verlag, 1983. Cited by page number.
- WL *Wissenschaft der Logik* (1812, 1816), *Werke* 5–6. Cited by *Werke* volume and page number.
- Hegel's Science of Logic*, translated by A. V. Miller. London: George Allen & Unwin, 1969. Cited by page number.

In writings cited by paragraph (§), a comma used before “R” or “A” means “and”. Thus: “PR § 33,A” means: “PR § 33 and the addition to § 33”; “PR § 270,R,A” means: “PR § 270 and the remark to § 270 and the addition to § 270”.

2. John Stuart Mill, *Utilitarianism*, edited by George Sher (Indianapolis, IN: Hackett Publishers, 1979) p. 4.

3. See: Marcus Singer, *Generalization in Ethics* (New York: Alfred Knopf, 1961), pp. 292–95; Dieter Henrich, “Das Problem der Grundlegung der Ethik bei Kant und im spekulativen Idealismus,” in P. Engelhardt (ed.) *Sein und Ethos* (Mainz: 1963); Andreas Wildt, *Autonomie und Anerkennung* (Stuttgart: Klett-Cotta Verlag, 1982), 84–96, Christine Korsgaard, “Kant’s Formula of Universal Law,” *Pacific Philosophical Quarterly*, forthcoming. The most formidable recent interpretation of the universal-law formula, defending it against criticisms like Mill’s, is Onora Nell (O’Neill), *Acting on Principle: An Essay on Kantian Ethics* (New York: Columbia University Press, 1975), especially ch. 5. The exception to the rule, someone who argues that Hegel’s emptiness charge against Kantian ethics can be sustained on the usual interpretation, is Michael Hardimon, *Individual Morality and Rational Social Life: A Study of Hegel’s Ethics* (University of Chicago Ph.D. Dissertation, 1985), ch. 1.

4. This connection between the emptiness charge and Hegel’s critique of Kant’s theory of moral motivation is made by Andreas Wildt, *Autonomie und Anerkennung: Hegels Moralkritik im Lichte seiner Fichte-Rezeption* (Stuttgart: Klett-Cotta Verlag, 1982), ch. 1, sec. 2.

5. See Barbara Herman, “On the Value of Acting from the Motive of Duty,” *The Philosophical Review* 90 (1981): 374–76. Cited below as “Herman.”

6. See also Paul Dietrichson, “What Does Kant Mean by ‘Acting From Duty’?” in R. P. Wolff (ed.) *Kant: A Collection of Critical Essays* (Garden City, NY: Doubleday & Co., 1967), and Allen Wood, *Kant’s Moral Religion* (Ithaca, NY: Cornell University Press, 1970), pp. 245–47.

7. Friedrich Schiller, “On Grace and Dignity,” *Schillers Werke* (Stuttgart: Cotta’schen Verlag, 1898), Bd. 11, pp. 238–96; cf. *Complete Works of Friedrich Schiller* (New York: P. F. Collier, 1902), vol. 8, pp. 175–229. Kant’s brief reply to Schiller can be found at R 23–24n/18–19n.

8. In fact, in the essays of 1801–1802, Hegel is oriented more to Fichte’s moral philosophy than Kant’s, and he seems to be thinking of the moral law here not in any of its Kantian formulations but instead in its formulation in Fichte’s *Foundations of Ethical Theory* (1796): “Always act according to your strongest conviction concerning your duty; always act in accordance with your own conscience” (Fichte, *Werke* [Berlin: W. de Gruyter, 1965] 4: 156). In this formulation, the Kantian idea of moral worth as acting from duty is treated as central to the moral law, as determining its whole content. It may be thought that Fichte’s formula is essentially more open to

the emptiness charge than Kant's universal law formula. But the fact is that in the *Foundations* Kant claims to derive the universal law formula entirely from the concept of a will which acts from duty, so that if Kant's derivation is sound, his principle ought not to contain anything not already implied in Fichte's.

9. See *Kant's Moral Religion*, pp. 40–52.

10. The claim that "reason can of itself be practical" has more than one meaning. To begin with, it can be a question either about the reasons we can have for acting, or it can be a question about motivation. In the first sense, "reason can of itself be practical" means that practical reasoning is not limited to finding means of satisfying antecedently given inclinations or desires, but our reason contains in itself grounds for choosing between different actions or principles which are not dependent on empirical desires. This is probably the most familiar sense, because it relates to the chief issue separating Kant from empiricist-instrumentalist theories of practical reason. In this sense, however, Hegel would not think of disputing the claim; he, every bit as much as Kant, believes that "pure reason can of itself be practical," or, as Hegel likes to put it, the free will can be its own content, so that it is "the free will which wills the free will" (PR § 27). In the sense that Hegel denies it, the claim that pure reason can of itself be practical is a claim about motivation: it is the claim that in moving us to act pure reason can (and should) assert itself in all its purity without the aid of any co-operating inclinations. Hegel denies this because he thinks that when we act from considerations of pure reason, we do so because pure reason expresses itself in and through empirical inclinations, which serve it as a necessary vehicle in relation to our sensuous nature. Kant, by contrast, denies that reason needs any such sensuous desires; for him, the only effect of pure reason on sensibility is the feeling of respect, whose only relation to our inclinations is to set limits to the extent to which we may permit ourselves to be moved by them. (KpV 72–76/74–79)

11. As early as the *Natural Right* essay, Hegel insists that "there can be no question of denying the [moral] standpoint, [but only of showing] that it is not the absolute standpoint." (NR 458–459/74) Yet neither here nor in Hegel's other Jena writings and lectures is morality given any positive exposition. In the *Natural Right* essay, "morality" is assigned to the "unfree" class, the bourgeoisie (NR 506/114); the "free class" (the military nobility) has an untintedly ethical outlook. The Jena lectures of 1805–06 still exclude morality from the outlook of the military nobility (JR 506/114), but it is specifically mentioned as part of the outlook of the civil servants, the "public" or "universal" estate, whose disposition is that of "fulfilling one's duty" conceived as a "free content" given to "empty thought." (JR 259/169) A further recognition of the positive role of the moral outlook in the modern world is found in ch. 6 of the *Phenomenology*, which begins with Greek ethical life and ends with modern (Kantian) morality, thereby implying that the moral standpoint is a higher one than that of ancient ethical life. But the *Phenomenology's* negative or "skeptical" procedure left no place for developing a positive doctrine of morality.

12. As Karl-Heinz Ilting observes (VPR17 303–304, n. 125), Hegel's theory of moral responsibility seems to have trouble dealing with certain cases of negligence. If the hunter did not intend to kill the man he shot and if it does not belong to the nature of his act of shooting into the darkness that he might hit a man, then it is unclear on Hegel's theory why he should be charged with any crime at all. The negligence in this case seems to derive from the fact that the hunter has an obligation to be certain that there is not a human being where he is shooting, and he has not met

this obligation. Simply adding the obligation, however, would not explain how the hunter can be responsible for the man's death (as opposed to being responsible simply for not making certain) and how, if he is responsible for the man's death, this differs from being responsible for it in a case of deliberate murder. This defect in Hegel's theory, however, seems irrelevant to the issues which divide Hegel from Kant regarding the emptiness charge.

13. See Bernard Williams, "Internal and External Reasons," *Moral Luck* (Cambridge; Cambridge University Press, 1981), pp. 101–13.

14. Cf. Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, MA: Harvard University Press, 1985), p. 194.

15. This conception of duty for Hegel is appropriate only from the moral standpoint, where "duty" is still something abstract and indeterminate. Later on, "accord with the good" will get its more concrete specification in the form of accord with the "substantial determinations" of ethical life—conformity to the demands of the laws and institutions of a rational society and conduct appropriate to the human "relationships" (*Verhältnisse*) to which the agent stands to others in that society (PR § 148).

16. Herman, pp. 376–82.

17. See: Richard Schacht, "Hegel on Freedom," A. MacIntyre (ed.) *Hegel: A Collection of Critical Essays* (Garden City, NY: Doubleday, 1972), p. 309; and G. H. R. Parkinson, "Hegel's Concept of Freedom," M. Inwood (ed.) *Hegel* (Oxford: Oxford University Press, 1985), p. 156.

18. Kant is sometimes interpreted as holding (or being committed to hold) that only autonomous actions have intelligible causes, and that heteronomous actions are simply natural events subject to the causal determinism of nature. The consequence, of course, would be that we aren't responsible for heteronomous actions, since they are not free. That Kant is not committed to this position is argued in my paper "Kant's Compatibilism," in A. Wood (ed.) *Self and Nature in Kant's Philosophy* (Ithaca, NY: Cornell University Press, 1984), esp. pp. 78–79.

19. Aristotle, *Nicomachean Ethics*, trans. by Terence Irwin (Indianapolis, IN: Hackett Publishing Company, 1985), 1101b10–36 (pp. 28–29).

20. Aristotle, *Nicomachean Ethics* 114b16–25 (pp. 69–70).

21. This point is made effectively by Thomas Nagel in "Moral Luck," *Mortal Questions* (Cambridge: Cambridge University Press, 1979).

22. In writing this paper, I have benefited from the comments of many individuals, including those who participated in discussions of different versions of it at Reed College, the University of California at San Diego, Cornell University, the University of Pennsylvania, the University of Rochester, SUNY College at Geneseo, and Union College. For written comments on earlier versions of the paper I wish particularly to thank Terence Irwin, Robert Pippin, and Andreas Wildt; and for their oral comments I am especially grateful to Henry Allison, Karl Ameriks, Anthony Appiah, Lewis Beck, Earl Conee, Alan Donagan, Paul Guyer, Jean Hampton, Charles Kahn, Christine Korsgaard, David Lyons, Ralf Meerbote, George Myro, Dennis O'Brien, William Peck, Sydney Shoemaker, Peter Steinberger, Nicholas Sturgeon and Neil Thomason.

[13]

Kant, Hegel, and Determining Our Duties

Kenneth R. Westphal

I.

Recently I have argued that Hegel's procedures for identifying, assessing and justifying practical norms are adapted directly from Kant's.¹ More specifically, Hegel identifies in Kant's practical philosophy a distinctive and very powerful form of constructivism about normative principles that preserves the objectivity sought by natural law theories, while avoiding issues involved in moral realism, in just the ways identified recently by Onora O'Neill. Hegel hails Kant's analysis of rational autonomy as Kant's cardinal contribution to practical philosophy.² Hegel likewise follows Kant's key strategy for determining legitimate normative principles by pursuing the Critical question, To what principles are we committed by even the most elementary free outward actions? Most importantly, like Kant, Hegel insists that only those practical principles are legitimate for which sufficient justifying reasons can be given to all parties affected by actions based on and guided by those principles. A consequence of this requirement is that reason is the ultimate and sole source of normative authority; no independent or external sources of authority can be taken as justificatory premises for normative principles. This is central to the normative autonomy of reason.

If Hegel's procedures are as deeply indebted to Kant as I have argued, then the question arises – kindly put to my by Sharon Byrd – why shouldn't we just focus on Kant's views? What could Kantians (among others) learn from Hegel's *Rechtsphilosophie*? The philosophical debates between Kant and Hegel are enormously rich and complex, even if we restrict our attention to practical philosophy.³

¹ In: Kenneth R. Westphal, "Objektive Gültigkeit zwischen Gegebenem und Gemachtem. Hegels kantischer Konstruktivismus in der praktischen Philosophie", *Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics* 11 (2003): 177–98.

² *Rph* §§ 133, 135 Anm.; G. W. F. Hegel, *Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse*, Berlin, Nicolai, 1821; rpt. in: E. Moldenhauer & K. M. Michel, eds., *Werke in Zwanzig Bände*, Frankfurt am Main: Suhrkamp, 1970; cited as "*Rph*", by section (§), published Remark (Anm.), or lecture notes (Z) appended to Hegel's sections by his editors.

³ The genuine philosophical debates between Kant and Hegel have been occluded by unfortunate and deeply mistaken associations of Hegel's views with reactionary and fascist politics, by often poor secondary literature on Hegel's views, by the unfortunate tendency of

No brief essay can answer this question thoroughly. Here I identify several key issues regarding which Hegel developed his views beyond Kant's, in ways that philosophers, Kantians included, should welcome. In this way I hope to suggest that those, like Joachim Hruschka, who expect as a matter of course nothing less than the fullest philosophical, historical and textual acuity, may indeed have occasion to benefit from Hegel's developments of and beyond Kant's *Rechtslehre*.⁴

The general theme explored here concerns the aim and structure of practical philosophy, and what is required to determine specific duties. I develop this theme by discussing the following issues: two oversights in Kant's justification of rights to possession (§ 2),⁵ the role of philosophical anthropology in Kant's universalization tests (§ 3), the roles of social institutions in specifying our ethical obligations (§ 4), Kant's under-developed view of government (§ 5), and Hegel's claim that, unlike Kant's *Rechtslehre*, his *Rechtsphilosophie* provides an "immanent" doctrine of duties (§ 6).⁶

II. Two Oversight in Kant's Justification of Rights to Possession

Demonstrating how rights to possession are possible is the key first step in Kant's *Rechtslehre*, for two reasons. It is Kant's most basic case of demonstrating how our innate right to freedom can ground further acquired rights to possess things distinct from ourselves, even when we do not occupy or hold them, and these provisional rights to possession (*provisorisches Besitzrecht*) provide a key premise in Kant's justification of our membership in a politically organized state.

philosophers to form factions and schools, by the professional hazzard of being prone, after having extended the enormous effort to understand a great philosopher's views, to defend those views almost no matter what, and to find the demands of mastering any two such philosopher's views over-taxing. While all of this is understandable, none of it is philosophically tenable. Fortunately, philosophical scholarship is beginning to move beyond those stalemates. If Hegel held the terrible views commonly ascribed to him, he would deserve the scorn poured upon him; however a modicum of responsible scholarship suffices to show that the Hegel myths are entirely unsubstantiated by Hegel's texts.

⁴ For a conspectus of Hegel's *Rechtsphilosophie*, please see K. R. Westphal, "The Basic Context and Structure of Hegel's *Philosophy of Right*", in: F. C. Beiser, ed., *The Cambridge Companion to Hegel*, Cambridge: Cambridge University Press, 1993, pp. 234–69; *idem.*, "Hegel on Political Representation: Laborers, Corporations, and the Monarch", *The Owl of Minerva* 25.1 (1993): 111–16; and *idem.*, "Hegel's Standards of Political Legitimacy", *Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics* 10 (2002): 307–20.

⁵ Parenthetical section numbers in the text refer to sections of the present essay.

⁶ I have examined further issues in Hegel's constructive critique of Kant's practical philosophy in K. R. Westphal, "Hegel's Critique of Kant's Moral World View", *Philosophical Topics* 19.2 (1991): 133–76; and "How 'Full' is Kant's Categorical Imperative?", *Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics* 3 (1995): 465–509. Regarding the irrelevance of transcendental idealism for defending the possibility of moral freedom and responsibility, see *idem.*, *Kant's Transcendental Proof of Realism*, Cambridge: Cambridge University Press, 2004, § 61.

The centrality of rights to possession for Kant's whole analysis is made clear by the questions Kant posed in the first paragraph of his "Deduction of the Concept of merely rightful Possession of an outer Object (*Gegenstand*) (possessio noumenon)":

The question: How is it possible for *something external to be mine or yours?* resolves itself into the question: How is *merely rightful* (intelligible) *possession* possible? and this resolves itself in turn into the third question: How is a *synthetic proposition of right* possible *a priori*?⁷

One striking feature of Kant's formulation is his repeated use of the term "how" ("wie"). Asking *how* something is possible presupposes that it *is* possible. Kant's entire analysis omits the logically prior and more fundamental question, *whether* it is possible for something external to be mine or yours. The underlying, unanalyzed, and as such dogmatic assumption that rights to possession without detention *are* possible is no proper basis for a truly Critical examination and justification of rights to possession.

Kant's focus on "how" rights to possession are possible also omits a second important question: Why are rights to possession necessary? Why are they required? Obviously, rights to possession solve a problem of social coordination, as was clearly recognized in the Modern natural law tradition. This raises the question, under what conditions does this coordination problem arise? This question Kant does not answer, indeed he does not even consider it, in his published *Rechtslehre*. Hegel's analysis of property addresses these two fundamental questions first, and answers Kant's question of "how" rights to possession are possible very much along Kant's lines.⁸

I hasten to add that Kant did have the resources to answer those two fundamental questions.⁹ However, providing a sound Kantian analysis and justification of the claim that *de jure* rights to possession *are* possible and *are* necessary requires using vastly richer information about our human form of finite rational agency

⁷ *RL* § 6, 6: 249.30–33. I refer to the volume:page.line numbers of *Kants Gesammelte Schriften*, Königlich Preußische (now Deutsche) Akademie der Wissenschaften, Berlin: G. Reimer (now De Gruyter), 1902–; usually referred to as "Akademie-Ausgabe". The Akademie pagination is reproduced in all recent translations. All translations are my own. Kant's *Rechtslehre* appears in volume 6 and is designated "RL". Other individual works are occasionally referred to by their title, by a key word from their title, or by the initials of their German title. The passage quoted here is analyzed in detail by *Hans Friedrich Fulda*, "Kants Begriff eines intelligiblen Besitzes und seine Deduktion ("Metaphysische Anfangsgründe der Rechtslehre", § 6)", *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics* 5 (1997): 103–19.

⁸ *Rph* §§ 34–64.

⁹ I examine this issue in detail in *K. R. Westphal*, "Do Kant's Principles Justify Property or Usufruct?", *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics* 5 (1997): 141–94. A briefer summary, with one improvement in substance, appears in *idem.*, "A Kantian Justification of Possession", in: M. Timmons, ed., *Kant's Metaphysics of Ethics: Interpretive Essays*, New York: Oxford University Press, 2002, pp. 89–109.

than Kant ever mentions in *The Metaphysics of Ethics*. To fully justify legitimate intelligible rights to possession (possession without detention or holding) using a Contradiction in Conception requires answering these three fundamental questions: Are intelligible rights to possession possible? Under what conditions are such rights necessary? If such rights are both possible and necessary, *how* are they possible? Only sufficient affirmative answers to these *three* questions can justify the legitimacy of *de jure* rights of possession without detention. To provide such answers using a Contradiction in Conception test, however, requires analyzing the implications of universal mutual interference with otherwise legitimate free individual actions if no one respects anyone's claims to possess objects of use. These implications are not discussed in Kant's *Rechtslehre*. Yet Kant's working notes clearly show that he was fully conversant with these crucial considerations, including at least implicit awareness that rights to possession are necessary (they are required) under social conditions of sufficient population density that mutual interference is at least a real prospect ("possibility"), at least potentially a genuine threat.¹⁰

Notice that Kant mentions such (broadly speaking) anthropological considerations expressly when analyzing our duty to become members of politically organized states, indeed directly in his "postulate of public right", namely: "In conditions of unavoidably being together with all other [persons] you should quit the natural condition and enter a rightful condition, that is, one of distributive justice".¹¹ Kant elaborates this anthropological condition somewhat more fully in the remainder of this section. Yet precisely Kant's reference here to the social conditions for the necessity of principles and institutions of distributive justice highlights his omission of such factors in his analysis of other metaphysical principles of right, including rights to possession. Failing to answer the two prior questions about whether rights to possession are possible, and under what conditions they are necessary (required), constitute two crucial oversights in Kant's analysis and justification of rights to possession. These oversights underscore the importance of broadly anthropological information for using Kant's Contradiction in Conception tests.

III. Philosophical Anthropology and Kant's Universalization Tests

Kant is clear already in the *Grundlegung* that his metaphysical principles of practical reason require "anthropology" to be applied to us as human beings, so to generate specific moral injunctions or permissions.¹² Here lies a crucial issue: Kant expressly provides a *Metaphysics of Ethics*.¹³ The key case of justifying

¹⁰ "Do Kant's Principles Justify Property or Usufruct?" (op. cit., fnnt. 9), §§ 3.7–3.10.

¹¹ *RL* § 42, 6: 307.8–11; cf. 306.22–28, 307.14–308.2

¹² *Gr* 4: 412.4–5, cf. *MdS* 6: 216.34–217.8.

¹³ Kant's use of "Sitten" is broad, including both *Rechts-* and *Tugendlehre*, or justice and morals. Here I use the term "ethics" to designate Kant's broad sense of "Sitten", "justice" to

rights to possession (§ 2), together with this observation in Kant's *Grundlegung*, underscore the fact that, and the extent to which, Kant's *metaphysics* of ethics comprises a set of principles and procedures,¹⁴ though as such it is not a *doctrine* of ethics (*Sittenlehre*). Any Kantian doctrine of ethics, of actual, specific, action-guiding human duties, permissions and prohibitions requires combining Kant's *Metaphysics of Ethics* with a philosophical anthropology of human nature and agency and our human circumstances of action. Obviously, Kant does include anthropological considerations along these lines in his published writings on these topics. However, the closest Kant came to providing the relevant philosophical anthropology in any systematic form are his lectures, *Anthropology from a Pragmatic Perspective*, which is not quite the same undertaking. Kant's metaphysical principles require a specifically "practical anthropology" for their application to human beings.¹⁵

Hegel accepts this further task of Kant's program in practical philosophy, and seeks to provide, not only a metaphysics of practical reasoning, but a doctrine of ethics that specifies our specific rights, duties and permissions.¹⁶ Hegel does this by trying to show how normative principles relate to our actual form of human agency in our actual circumstances of action, including their natural, social and historical features. One main aspect of Hegel's notorious charge that Kant's Categorical Imperative is "empty" is that the tests of the Categorical Imperative cannot themselves specify any actual duties, not without also taking other kinds of particular information into account.¹⁷ This charge may appear unwarranted, precisely because Kant indicates expressly that anthropology is required to apply his metaphysical principles of practical reasoning to any human agent or circumstance. Indeed, Kant even states that the complete system of the *Metaphysics of Ethics* requires a transition that, by applying the pure principles of duty to cases of experience, would *schematize* these principles, as it were, and present them as ready for morally practical use.¹⁸

Although such considerations form no division of Kant's system of practical philosophy, they are a "proper appendix" to it, for "even this application belongs

designate "Recht", and "moral" (and its cognates) to designate issues within Kant's doctrine of virtue.

¹⁴ Cf. *TL* 6: 468.11–13.

¹⁵ *Gr* 4: 388.9–14, 4: 388.35, *MdS* 6: 216.34–217.11.

¹⁶ *Rph* § 148 Anm..

¹⁷ *Rph* § 135 Anm. Another aspect of Hegel's charge that Kant's Categorical Imperative is "empty" concerns moral motivation. Hegel highlights the tension between Kant's official insistence that respect for the moral law must be the sole motive in dutiful action, and his ultimate recognition that our happiness is inevitably a determining ground (*unvermeidlicher Bestimmungsgrund*) of our will. If so, then human actions satisfying Kant's official account of moral motivation that accords with the Categorical Imperative belong to the null set; hence the Categorical Imperative is empty. For discussion, see "Hegel's Critique of Kant's Moral World View" (*op. cit.* fnnt. 6), §V.

¹⁸ *TL* § 45, 6: 468.28–31.

to the complete presentation" of Kant's system of practical philosophy.¹⁹ Given its official importance to Kant's programme in practical philosophy, it is surprising that Kant never wrote this appendix in practical anthropology, not even in lecture form. Can it be surprising, then, that there has been so much controversy about whether or how Kant's "pure principles of duty" can be presented as "ready for morally practical use" and thereby provide determinate guidance for specific human actions? Hegel aims to provide more than a *metaphysics* of ethics in order to resolve such issues by providing a doctrine of duties. To this extent, and in this important regard, Hegel makes common cause with Kant. It is deeply unfortunate that this has been so widely overlooked in discussions of these issues.

The role of some kind of practical anthropology in using Kant's Categorical Imperative to determine the deontic status of maxims is evident throughout Kant's own examples of using the tests of the Categorical Imperative, and is often recognized as crucial in the secondary literature. Onora O'Neill and Barbara Herman – two of the most acute and insightful expositors and defenders of Kant's practical philosophy – have been especially explicit about its role.²⁰ Kant's tests of the Categorical Imperative use the Principle of Hypothetical Imperatives, namely, that "whoever will the end, also wills (insofar as reason has decisive influence on his actions) the indispensably necessary means [to it] that lie within his power".²¹ This principle requires considering what *we can will*. It thereby serves to introduce relevant anthropological information into Kant's tests of the Categorical Imperative. Our duty to speak the truth (if and when we speak) in part rests on our lack of omniscience and our ability to think without speaking, and thereby to conceal our beliefs or intentions, to the disadvantage of others;²² our duty to refrain from extortion likewise rests in part that we are fearful and suffer pain in ways that allow us to be coerced; likewise our duty to aid others in distress rests in part on our lack of omnipotence, our liability to distress, and others' capacity to help. These kinds of anthropological information, however, are provided only piecemeal in Kant's examples, and Kant provides no real guidelines for how general or specific this information should or may be. Likewise, aside from the highest good as the necessary object of practical reason, Kant remarks only in passing on such apparently important and relevant topics as "obligatory ends" (of which there are two: one's own moral perfection and the happiness of others), "necessary ends", and "true needs".²³ This simply is not enough practical anthropology to underwrite the use

¹⁹ *TL* § 45, 6: 469.8–12.

²⁰ Onora O'Neill, *Constructions of Reason*, Cambridge: Cambridge University Press, 1989, pp. 74, 105–06, 114–15, 121, 133–34; Barbara Herman, *The Practice of Moral Judgment*, Cambridge, Mass.: Harvard University Press, 1993, pp. 122, 203, 204–06, 235.

²¹ *Gr*, 4: 417.8–10

²² Compare Kant's example, not developed in this connection, of beings who can only think by speaking aloud (*Anthr.* 7: 219.30–33).

²³ Obligatory ends: *TL* 6: 382–388; necessary ends: *KdpV* 5: 115.9–11; true needs: *TL* 6: 393.30, 432.12, 7: 201.34

of Kant's metaphysical principles of ethics to guide determinate actions in actual human circumstances.

IV. Social Institutions, Ethical Obligations, and Kant's Tests of the Categorical Imperative

Among Kant's examples of using the tests of the Categorical Imperative are cases of making false promises, absconding with unregistered deposits, bearing false testimony, and theft. In all these cases, it is easy to understand how each of the intended acts requires an established and stable social institution, and how in each case the universalized counterpart maxim of an unethical agent would obviate the relevant institution, and thus obviate an essential precondition of the unethical maxim. There are two key problems with Kant's use of these examples.

First, finding that an action violates a social institution does not of itself determine the deontic status of that action. Rather, that action is only ethically proscribed if the social institution itself is legitimate and obligatory. (Violating an institution of slavery by setting slaves free is a step forward in the progress of freedom and justice; violating racist or sexist institutions or acts of civil disobedience can also be important steps in this progress.)

Second, any obligatory, legitimate social institution as such contains deontic provisions to the effect that to engage at all in that institution rightly requires conforming with its provisions, at least in part by acting in accord with it. Consequently, we don't need to use any test of the Categorical Imperative to determine whether actions that violate a legitimate social institution are ethically proscribed. If property is legitimate, theft is thus unethical; if one makes a promise, one is thus ethically obligated to keep it, and so on.²⁴ Hence the key issue here is not whether violating this or that institution is wrong, but whether the institution itself is legitimate. This is something too many of Kant's examples presume rather than demonstrate.

Precisely this is a key point of Hegel's objection to Kant's Tests of the Categorical Imperative:

That *there is no property* as such (*für sich*) contains a contradiction just as little as that this or that individual people, family, etc. doesn't exist or that altogether *no human beings live*. If instead it is established and presupposed that there are property and living human beings and that they [both] should be respected, then it is a contradiction to commit a theft or murder...²⁵

²⁴ These cases are examined by *Christian Schnoor*, *Kants Kategorischer Imperativ als Kriterium der Richtigkeit des Handelns*, Tübingen: J.C.B. Mohr (Paul Siebeck), 1989; the key points are summarized in *K. R. Westphal*, "How 'Full' is Kant's Categorical Imperative?" (op cit. fn. 6), §§ 2.6–7, 2.14.

²⁵ *Rph* § 135 Anm.

Now Kant does justify *de jure* possession, though as noted above (§ 2) his justification requires reconstruction along the lines Hegel provides. Thus dispossession by theft or fraud is wrong. (Though dispossession for reasons of insolvency can be legitimate.) When Kant turns to contract, however, he considers the rights and obligations of the contracting parties, while disregarding whether the “single sum (system) of principles” comprised in contractual right (*Vertragsrecht*) is itself justified or justifiable.²⁶ Under what conditions is any system of contractual rights justifiable? Under what conditions is it legitimate? Answering these questions requires much more than developing the metaphysical principles that can govern such institutions. It also requires answering the “anthropological” question of when, under what social conditions, are contractual rights necessary for beings like us? (The relevant conditions are social, at the very least, because contracts are forms of agreement among two or more parties.) We find the same circumstance in Kant’s discussion of domestic rights, which defines duties and obligations within the household without first inquiring into the justification or legitimacy of households as such. We find much the same circumstance in Kant’s discussion of rights of acquisition through court decisions.²⁷ Kant’s published *Rechtslehre* leaves behind a hefty docket of unfinished philosophical business which must be addressed in order to determine whether, when or to what extent Kant’s metaphysical principles of justice are relevant to human affairs, and so may serve or at least help to determine specific action-guiding duties, permissions or prohibitions. In view of these issues and problems, it is not surprising that O’Neill and Herman acknowledge that Kant’s record in casuistry is disappointing, in part because so many of our duties are specified, if not defined, within the specific context of social institutions.²⁸ As in the case of possession, however, Hegel’s *Rechtsphilosophie* addresses these equally crucial questions about the necessity of social institutions before articulating the principles that legitimately govern them. It is to Hegel’s credit that he recognized the shortcomings of Kant’s account and sought to address them comprehensively.²⁹

²⁶ *RL* §§ 18–21.

²⁷ I say “much the same,” because Kant contends that the judicial authority is one of the three authorities inherent in the state (*RL* § 45, 6: 313.17–27), though his justification for this claim is far from clear or convincing.

²⁸ *Constructions of Reason* (op. cit. fn. 20), pp. 88, 103, 150, 152, 154, 158; *The Practice of moral judgment* (op. cit. fn. 20), pp. 205–07, 234–35; discussed in Westphal “Hegel’s Critique of Kant’s Moral World View” (op. cit. fn. 6), §IX, and in “How ‘Full’ is Kant’s Categorical Imperative?” (op. cit. fn. 6), §§ 3.4–5, 3.22, 5.7.

²⁹ Philosophers, particularly liberals, often resist social analyses of norms or their justification because they assume, implicitly if not explicitly, that social analyses cannot avoid either or both of two untoward results, namely, historicist relativism or the subordination of individuals to a social whole. These assumptions rest on false dichotomies that Hegel identified and resolved. (Failure to recognize this has produced enormous misunderstanding in the literature.) See K. R. Westphal, *Hegel’s Epistemology: A Philosophical Introduction to the Phenomenology of Spirit*, Cambridge, Mass.: Hackett Publishing Co., 2003, §§ 16–20, 29–37. Some of the key points are summarized, with particular consideration of practical philo-

V. Kant's Under-developed Views of Government

The form, functions, and proper authoritative scope of government are central issues in political philosophy. Kant discusses these in his *Rechtslehre*, though he forewarns his readers that his views on government are not fully developed:

Towards the end of the book I have developed some sections less fully than might be expected by comparison with what comes before: in part because they appear to me to be easily inferred from the preceding discussion, in part also because the last (concerning public justice) are just now subject to so much discussion and yet are so important, that they easily justify postponing final judgment for some time.³⁰

Additionally, at this time Kant sought to avoid having his *Rechtslehre* censored.³¹ Though he is not very explicit about just what is involved in republicanism, Kant's *Rechtslehre* clearly advocates republican rather than despotic forms of government.³² Kant identifies three governmental authorities: legislative, executive, and judicial. Each of these is to be exercised by distinct officials.³³ Kant models his government on a complete separation of powers. Unfortunately, in other passages he muddles these powers together, and in others he fails to recognize how the judicial authority could legitimately restrain illegitimate acts of the executive or legislature. Most egregiously, Kant's stated argument against any right to rebel against tyranny conflates the executive and judicial powers in a way that can only be called, on Kant's own account, despotic.³⁴ Part of the problem with Kant's constitutional theory is his failure to consider governmental checks and balances of power, or to consider judicial powers of impeachment, though he considers something verging on impeachment in some of his unpublished *Reflexionen*.³⁵ Plainly Kant was right to recognize that his account of government was not fully devel-

sophy, in *idem.*, "Rationality and Relativism: The Historical and Contemporary Significance of Hegel's Response to Sextus Empiricus", *Esercizi Filosofici* 6 (2002): 22–33. An Italian translation of this essay, by Cinzia Ferrini, is available on the web: "Razionalità e relativismo: Il significato storico e contemporaneo della risposta hegeliana a Sesto Empirico", *Etica e Politica* 4.1 (2002), http://www.units.it/~etica/2002_1/index.html.

³⁰ *RL* Vorrede, 6: 209.8–14.

³¹ See *Frederick Beiser*, *Between Kant and Fichte*, Cambridge, Mass.: Harvard University Press, 1992, chapter 2, especially pp. 48–52.

³² I discuss the details of Kant's account of government in "Kant on the State, Law, and Obedience to Authority in the Alleged 'Anti-Revolutionary' Writings", *Journal of Philosophical Research* 17 (1992): 383–426, reprinted in: S. Byrd & J. Hruschka, eds., *Kant and Law*, Aldershot: Ashgate, 2005, § IV.

³³ *RL* § 49, 6:316–318.

³⁴ These claims can be established only by detailed analysis, which I provide in "Kant on the State, Law, and Obedience to Authority," (op. cit. fn. 32), §§ V, VI. However, in that essay (§§ VII, X) I argue that Kant's strict prohibition on the right to rebel only holds within his metaphysical principles of justice, and so only pertains to a fully legitimate government, though Kant also provides strong though *conditional* grounds for prohibiting rebellion against actual states.

³⁵ See "Kant on the State, Law, and Obedience to Authority" (op. cit. fn. 32), §§ VIII, IX.

oped, and required further thought prior to final Critical judgment. On these topics, too, Kant's *Rechtslehre* leaves open a large budget of important issues, on which one should hope his successors would improve.

At the risk of raising incredulity, if not outrage, I say again: it is to Hegel's credit to have developed a much more thorough account than Kant's of governmental structure, function, and authority. Hegel's retention of hereditary monarchy³⁶ and the hereditary rights of landed aristocrats to sit in the upper house of the Estates Assembly³⁷ have been understandable sources of consternation. I certainly don't defend these provisions, but it is very important to understand several important features of Hegel's governmental theory. First, Hegel deliberately outlined a form of government he believed was feasible for contemporaneous Prussia. Within that context, Hegel's advocacy of constitutional monarchy³⁸ was a highly controversial, liberalizing proposal, as was his advocacy of a permanent representative assembly. (None existed in Prussia until the fateful year of 1848.)

Second, Hegel's liberal credentials are established by several key provisions he advocated. Hegel insisted that legislative, executive, and judicial powers are mutually interdependent,³⁹ though it is obvious that in practice their interdependence would provide checks and balances when and as needed. Hegel placed responsibility for drafting legislation in the expert hands of cabinet ministers, who are fully accountable for their actions.⁴⁰ Hegel defended several fundamental civil rights, such as equal rights and freedoms of person, belief, property, profession, and trade,⁴¹ including equal civil rights for jews and other groups,⁴² along with rights to political representation for all.

Third, Hegel's entire governmental apparatus, and especially the Estates Assembly, has a clear telos. Hegel rejected open democratic elections because they are too unstructured to insure that each of the important economic and civil groups and structures within society are properly represented in government, and he clearly saw in 1821 precisely the problems that have befallen, e. g., democracy in the United States of America. Though Hegel had to avoid calling his political position "republican", it plainly is; on Hegel's view, only the whole, politically organized nation in which all participate is sovereign.⁴³ Individuals play a role in form-

³⁶ *Rph* § 275.

³⁷ *Rph* § 307.

³⁸ *Rph* § 273.

³⁹ *Rph* §§ 272 Anm., 286 & Anm., 301 Anm., 308, 310 & Anm.

⁴⁰ *Rph* §§ 283, 284.

⁴¹ *Rph* §§ 35, 36, 38, 41–9, 57, 62 Anm., 66, 206, 207, 209 Anm., 252, 270 Anm.

⁴² *Rph* § 209. Hegel explicitly repudiated the anti-Semitism of his contemporaries (*Rph* § 209 Anm.; cf. § 270 fnt. 2).

⁴³ *Rph* § 278. Hegel distinguished between the government and the state as a whole. He called the government the "strictly political state" (*Rph* §§ 273, 276) and reserved the term "state" for the whole of a civilly and politically well-organized society (*Rph* §§ 257 – 71). He

ing the content of law by maintaining and modifying social practices as needed to secure their freedom and their individual ends. Those social practices necessary for achieving freedom are, in Hegel's view, the proper basis of and content for legitimate statutory law. Codification makes explicit the normative principles embodied in and crucial to social practices.⁴⁴ Promulgating codified law contributes to informing people about the structure of their social context of action.⁴⁵ This is why law must be codified and promulgated in the national language,⁴⁶ and why judicial proceedings must be public.⁴⁷ The enforcement of law regularizes the context of individual action and protects and preserves the social practices people have developed to exercise their freedom and achieve their individual aims.⁴⁸ As conditions change, so must laws change in order to remain legitimate and effective; assessing and revising statutory law is the prerogative of the legislative branch of government.⁴⁹ Citizens, through their political representatives in the Estates Assembly, monitor and advise legal developments and government policies and acts.

The political and historical telos of Hegel's governmental apparatus becomes evident when the points just reviewed are related to his account of the Estates Assembly. Through its representational functions, the Estates Assembly provides popular insight into the fact that the laws enacted by the Crown and administered by the Executive are laws that codify and protect the social practices in which one participates and through which one achieves one's ends.⁵⁰ The Estates Assembly thus places the government under popular purview.⁵¹ The main function of Hegel's Estates Assembly is educative, to inform people systematically and thoroughly about the activities of their government and the principles, procedures, and resources for acting within their society, so that individuals can resolve to act in an informed and responsible manner, unencumbered so far as possible by unexpected consequences. This education and information enables individuals to act voluntarily and autonomously within their society.⁵² Hegel expected that when people in a just society understand how their society meets their needs, facilitates their ends, and satisfies the requirements of justice they would affirm their membership in society and would act within it willingly. Though Hegel held that constitutional

called civil society – *sans* representative government – “the state external” (*Rph* § 183). Ignoring these distinctions is one fundamental error underlying fascist misrepresentations of Hegel's politics.

⁴⁴ *Rph* §§ 209 – 12; cf. §§ 187R, 249.

⁴⁵ *Rph* §§ 132 Anm., 209, 211 Anm., 215; cf. 228 Anm.

⁴⁶ *Rph* § 216.

⁴⁷ *Rph* §§ 224, 228 Anm.

⁴⁸ *Rph* §§ 208, 210, 218, 219.

⁴⁹ *Rph* § 298.

⁵⁰ Cf. *Rph* §§ 314, 315. Hegel's “Crown” includes both the prince and the cabinet ministers; *Rph* § 275.

⁵¹ *Rph* § 302.

⁵² *Rph* § 301 & Anm.

law ought to be regarded as fixed an eternal,⁵³ in fact it is not. The constitution and constitutional law must and do change over historical time.⁵⁴ When they change rightly, they keep in step with other social, political, and legal developments which themselves occur when people devise new ways of expressing or advancing their freedom, whether personal, social, or political. Hegel recognizes that these gradual legal and constitutional changes can and do result in momentous social transformations.⁵⁵ Because Hegel's governmental institutions are designed to protect, facilitate, and improve individual autonomy, it is altogether appropriate to recognize and to stress that his governmental institutions, and especially his Estates Assembly, allow for rather simple modifications that would transform them into democratic institutions, albeit unconventional ones. The fact that the institutions of government, especially the legislative assembly, are necessary for free, autonomous action is their primary political justification, according to Hegel. In these key regards, which can be summarized only very briefly here, Hegel's *Rechtsphilosophie* advances substantially beyond Kant's account of government in his *Rechtslehre*.

VI. Hegel's "Immanent" Doctrine of Duties

A key component of Hegel's objection to Kant's Categorical Imperative as a criterion of normative legitimacy is that it affords no "immanent" doctrine of duties. Hegel makes this objection after praising Kant's account of autonomy:

As essential as it is to highlight the pure unconditioned self-determination of the will as the root of duty, as is done in knowledge of the will, first achieved by the *Kantian* philosophy, which reached the fixed ground and point of departure of that knowledge through the thought of the will's infinite autonomy (cf. § 133), it is equally the case that seizing on the mere moral standpoint, which does not become the concept of ethical life (*Sittlichkeit*), reduces this achievement to an *empty formalism* and moral science to a blather about *duty for duty's sake*. On the basis of this standpoint no immanent doctrine of duties (*immanente Pflichtenlehre*) is possible; one can of course bring in stuff *from without* and thereby reach *particular* duties, but from that determination of duty, as *the lack of contradiction, the formal correspondence with itself*, ... there can be no transition to the determination of particular duties ...⁵⁶

Understandably, Kantians have been scandalized by this passage. The previous discussion of the contrast between a metaphysical system of practical principles (*Metaphysik der Sitten*) and a doctrine of duties (*Sittenlehre*) (§ 2), and Kant's express indication that his *Metaphysics of Ethics* requires practical anthropology for its application to human circumstances and actions (§ 3), should enable us to examine Hegel's claim dispassionately and sensibly, and to appreciate how deeply

⁵³ *Rph* § 273 Anm.

⁵⁴ *Rph* §§ 273 Anm., 298.

⁵⁵ *Rph* § 298Z.

⁵⁶ *Rph* § 135 Anm., cf. § 148 Anm.

Hegel valued Kant's achievement, his discovery of the autonomy of the will, expressed in this very passage.⁵⁷

The first important point to note is that Hegel seeks to *respond* to the problem he poses here by supplementing Kantian moral theory (summarized in Hegel's discussion of "morality", part Two of his *Rechtsphilosophie*⁵⁸) with his own account of ethical life ("Sittlichkeit", part Three of his *Rechtsphilosophie*), in order to provide a genuine doctrine of duties. To this very great extent, Hegel regards himself as furthering Kant's project in practical philosophy. Despite the apparent tone of Hegel's objection to Kant's theory, Hegel could hardly have made plainer his intention to rectify this shortcoming in Kant's theory.⁵⁹

The second important point is to ask, what exactly does Hegel mean by an *immanent* doctrine of duties? Hegel uses this term only twice, both occasions are in the published *Grundlinien*, though I have found none in his extant lectures.⁶⁰ Yet it is worth puzzling out the answer to this question, even if only a preliminary account may be ventured here. One obvious part of the answer is that an immanent doctrine of duties must somehow avoid the bifurcation between a metaphysical system of principles and an independent, heterogenous philosophical anthropology, on the basis of which alone that system can be used to determine specific duties. Somehow, an immanent doctrine of duties must justify specific duties without appealing to extraneous considerations. This observation, however, only restates the task. What counts as "immanent", as opposed to "extraneous"? Immanent or extraneous with regard to what, exactly?

We get some help from Hegel's second use of this phrase. The relevant passage appears in the context of Hegel's introductory account of ethical life and its bearing on the nature, status, and determination of our duties.⁶¹ Hegel's basic aim in "Ethical Life" (part Three of his *Rechtsphilosophie*) is to take his account of moral reflection and autonomy developed in "Morality" (part Two) and integrate it with his account of property, contract and injustice developed in "Abstract Right" (part

⁵⁷ Hegel's charge, that even the most highly immoral action can pass the Contradiction in Conception test (*Rph* § 135 Anm.), appears to rest on his acute awareness of problems specifying the relevant maxim of the agent. He notes in one of his lectures that an act of theft, if conceived within an agent's maxim simply as acquiring something that was not previously one's own, would pass the Contradiction in Conception test; see *Hegel, Vorlesungen über die Philosophie des Rechts* (Berlin 1819/1820), nachgeschrieben von J. R. Ringer, E. Angehrn, M. Bondeli, & H. N. Seelmann, eds., Hamburg: Meiner, 2000, p. 676.561–571. Obviously, this is a deeply flawed maxim, but as Onora O'Neill points out, Kant's tests must work with the agent's own maxim; see *Onora Nell, Acting on Principle*, New York: Columbia University Press, 1975, pp. 21–31, 34–42, 112–43.

⁵⁸ *Rph* §§ 105–41.

⁵⁹ It is a serious blemish on scholarship that this simple but crucial fact has eluded the attention of commentators.

⁶⁰ *Rph* §§ 135 Anm. (just quoted), 148. I would appreciate receiving further references to Hegel's use of this phrase or clearly related phrases.

⁶¹ *Rph* §§ 142–57.

One). He seeks to show that both "Abstract Right" and "Morality" are (important) abstractions that are rooted in our concrete social life, the structure of which Hegel analyzes in "Ethical Life", including the family, civil society and government. Hegel contends that ethical life is the concept of freedom instantiated in an extant living community.⁶² By examining how the various features of social life, and the various features of individual lives within it, are systematically integrated in ways that facilitate, promote and protect the freedom and autonomy of individual members of society, Hegel aims to show that the social institutions he examines are necessary, legitimate and authoritative, so that our compliance with and participation in them is right and dutiful.

In this context Hegel states:

The ethical (ethische) doctrine of duties, i.e., as it is *objectively* ... is thus the following systematic development of this circle of ethical necessity, presented in this third part. The difference between this presentation and the form of a *doctrine of duties* lies only in this, that in the following the ethical determinations present themselves as the necessary relations; this suffices, without appending to each of them: *thus this determination is dutiful for each person*. ... An immanent and consequential (konsequente) doctrine of duties can ... be nothing other than the development of *those relations* that are necessary through the idea (Idee) of freedom, and are thus *actual* (wirklich) in their entire range, within the state [as a whole].⁶³

This passage does not immediately appear to provide much of an answer to our questions. The closing two phrases appear to suggest that a proper doctrine of duties is immanent within or with respect to "the idea of freedom" and "the state". Noting that Hegel here means the state as the whole of a civilly and politically organized society, rather than the government, does not offer much insight. It appears that Hegel proposes to begin with hazy notions of "the idea of freedom" and "the state as a whole" and somehow derive on their basis determinate duties for individuals. This suggestion fits with standard views of Hegel's *modus operandus*, common especially in German scholarship, according to which Hegel's approach is strictly "top down", beginning with the most general and purporting to derive from that the most particular.⁶⁴

⁶² *Rph* § 142.

⁶³ *Rph* § 148 Anm. Hegel's use of the term "ethische" at the beginning of this statement is unusual. He wrote this about it in his margin: "*Ethisch* – statt moralisch – sittlich".

⁶⁴ Reasoning such as this leads, e.g., no less a scholar than Karl-Heinz Ilting to charge that Hegel's exposition of governmental powers is backwards, because only the prince could and should represent the ultimate synthesis within Hegel's state of the governmental powers; see Ilting, "The Structure of Hegel's *Philosophy of Right*", in: Z. A. Pelczynski, ed., *Hegel's Political Philosophy*, Cambridge: Cambridge University Press, pp. 136–50, pp. 90–110. Ilting overlooks the fact that Hegel sought to integrate ("synthesize") self-conscious individuality with the collective bases of individual action, not simply for the prince, but for *all* citizens; the last step of this integration is achieved by and in the Estates Assembly; see K. R. Westphal, "Hegel on Political Representation" (op. cit. fnnt. 4), p. 115, and *idem.*, "The Basic Context and Structure of Hegel's *Philosophy of Right*" (op. cit. fnnt. 4), especially pp. 259–62.

This “top down” approach, however, is completely contrary to Hegel’s actual analysis and justificatory procedure in his *Rechtsphilosophie*. Hegel adapted and extended his analytical and justificatory strategy from Kant’s regressive strategy of transcendental proof in the *Critique of Pure Reason*.⁶⁵ Hegel’s justificatory strategy in his *Rechtsphilosophie* is regressive. It begins with the simplest outward act possible, taking something into possession. Hegel then seeks to determine through internal critique of that kind of act in its context those principles and institutions to which one is committed in order to perform that act legitimately and freely. Hegel extols Kant’s discovery that the basis of right lies in the will.⁶⁶ Hegel’s exposition immediately makes clear that his concern is not with some vague “will in general”. His concern lies in every and any particular individual will, which he analyzes precisely along the same lines as Kant’s “Incorporation Thesis”, namely, that no inclination, principle, fact, or reason is either justifying or motivating for an agent unless and until it has been incorporated by that agent into a maxim by an act of judgment that assesses the relevance and importance of that consideration within the present context of rational deliberation.⁶⁷ Hegel clearly realized that for both strategic and intrinsic reasons, he must and can only justify his normative theory by addressing it to individual rational agents. This is necessary strategically because he knows full well that we are living in an age of individualism.⁶⁸ It is necessary intrinsically because Hegel’s normative theory seeks above all to preserve and to promote individual rational autonomy.

The relevance of these fundamental features of Hegel’s normative theory to the present point, the interpretation of the passage quoted just above, is confirmed by Hegel’s marginal note to this sentence from that passage:

The difference between this presentation [in part Three of Hegel’s *Rechtslehre*] and the form of a *doctrine of duties* lies only in this, that in the following the ethical determinations present themselves as the necessary relations; this suffices, without appending to each of them: *thus this determination is dutiful for each person*.⁶⁹

To this sentence Hegel appended in his margin: “Pflicht – ist Recht, Dasein *seines* Willens”.⁷⁰ The relevant “immanence” of Hegel’s doctrine of duties thus involves showing that the principles, institutions and duties Hegel advocates are immanent with respect to the wills of individual rational agents.

⁶⁵ See Karl Ameriks, “Kant’s Transcendental Deduction as a Regressive Argument”, *Kant-Studien* 69.3 (1987): 273–87. For concise discussion of Hegel’s view, see Westphal, Hegel’s Epistemology (op. cit. fnnt. 29), §§ 1–11, 16–20.

⁶⁶ *Rph* §§ 4, 133Z, 135 Anm.

⁶⁷ *Rph* §§ 5–7. For discussion see Westphal, Hegel’s Epistemology (op. cit. fnnt. 29), § 20.3

⁶⁸ *Rph* § 29 Anm.

⁶⁹ *Rph* § 148 Anm.

⁷⁰ Werke (op. cit. fnnt. 2) 7: 297 note **; original emphasis. “Duty – is right, existence of his will”.

To show that the principles, institutions and duties Hegel advocates are immanent with respect to the wills of individual rational agents requires analyzing what individuals will, that is, how they exercise their rational agency, and determining how and under what conditions they can exercise their rational agency legitimately. This is precisely Hegel's task in his *Rechtsphilosophie*: "to comprehend drives (Triebe) as the rational system of determinations of the will is the content of the philosophical science of right".⁷¹ Here Hegel understands our drives broadly, to include both inclinations and rational impulses, including our drive towards freedom. To understand our drives as a rational system thus requires considering the metaphysical principles of practical reason of the kind Kant ascribed to our rational will (Wille), together with our empirical drives and inclinations which Kant ascribed to our freedom of choice (Willkür). Programmatically seen, Hegel's *Rechtsphilosophie* draws upon the kinds of considerations of natural and social facts and circumstances found in pre-Kantian Modern natural law theory, including Hume's,⁷² in order to answer the questions of why and under what circumstances various normative provisions (whether principles or institutions) are required and are properly functional, while appealing to Kant's constructive methods of justifying normative principles and institutions in order to determine which principles or institutions are legitimate, and insofar as they are, to explain why they are rationally justified. To fill out his account of those circumstances that involve or require normative provisions, Hegel updates the empirical resources of Modern natural law theory by drawing deeply from Scottish political economy. All of these factors Hegel weaves together using his regressive method of analysis and proof. Hence Hegel can and should subtitle his *Grundlinien der Philosophie des Rechts* as "*Naturrecht und Staatswissenschaft im Grundrisse*". All of these considerations are required, Hegel recognizes, to provide a determinate doctrine of duties underwritten by Kant's constructivist methods and principles for identifying and justifying legitimate practical principles and social institutions.

Showing that the principles, institutions and duties Hegel defends are immanent within the individual wills of rational agents requires many significant reconsiderations of the social bases of our individual activities. Only one of these may be highlighted here. Central to Hegel's *Rechtsphilosophie* is to transform our understanding of the requirements placed by legitimate law on individual actions. The common notion, typical in Anglophone legal and political thought and to individualist legal and political thought everywhere, is that freedom or liberty reside in the silence of the law. We are free, it is said, precisely in those domains of action that are not proscribed by law or morals or God. Hobbes put it succinctly: "For where liberty ceaseth, there beginneth obligation".⁷³ Regarded in this way, legal and

⁷¹ *Rph* § 19.

⁷² See Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume*, Oxford: The Clarendon Press, 1991.

⁷³ Thomas Hobbes, *De Cive*, chapter 2 § 10; the same statement occurs in *Elements of Law*, Part I chapter 15 § 9.

other obligations are inevitably nothing but restrictions on freedom. This view, too, was expressed pithily by Hobbes: "RIGHT, consisteth in liberty to do, or to forbear; whereas LAW, determineth, and bindeth to one of them: so that law, and right, differ as much, as obligation, and liberty; which in one and the same matter are inconsistent."⁷⁴ This notion that law is essentially restrictive is also found centrally in Kant's thought. For example, Kant states:

Thus the universal principle of right, act outwardly so that the free use of your choice (Willkür) can coexist with the freedom of everyone in accord with a universal law, is indeed a law which obligates me, though it does not at all expect, much less require, that I myself should limit my freedom to that condition due to this obligation; instead reason only says that in its idea freedom is limited in that way and that it may be so limited in fact by others. . . .⁷⁵

Hegel paraphrases this passage and cites it as an example of this common notion that concerns him gravely, that principles of right and legitimate law are inherently and solely restrictive of our freedom.⁷⁶ Hegel directly indicates his aim to improve upon this notion,⁷⁷ though he doesn't directly make it clear exactly how he proposes to do so.

One common way to understand Kant's tests of the Categorical Imperative is that inclinations propose actions, while the Categorical Imperative disposes of them (that is, decides which are permissible or obligatory, and which are prohibited). This simple model resonates with the circumstances identified earlier (§ 2), that Kant's metaphysical principles of right require a distinct source of information, a practical anthropology which is only an unwritten appendix to Kant's system of practical philosophy, in order to determine any specific duties of human beings. Barbara Herman rejects the idea that Kant's practical principles simply provide external constraints on human action. Instead, she contends, Kantian deliberation occurs in view of a "deliberative field" which includes all of one's heterogeneous interests and principles, whether these are moral, prudential, or personal considerations, or some other source of whatever gives one reasons. Morality provides one set of central considerations among others, it does not constrain our lives from without or only at the periphery.⁷⁸ Herman's model is attractive, though the metaphor of a "deliberative field" requires careful articulation, in part in order to explain just how this model provides an alternative to the simplistic view of exter-

⁷⁴ *Thomas Hobbes*, *Leviathan*, chapter 14 ¶3.

⁷⁵ *RL* Introduction § C, 6: 231.10–17.

⁷⁶ *Rph* § 29 Anm. The passage paraphrased by Hegel from Kant is misidentified by Allen Wood in his editorial notes to *Hegel*, *Elements of the Philosophy of Right*, Cambridge: Cambridge University Press, 1991, p. 403, note 2. The restrictive notion of freedom is also found, e. g., in the very title to *Robert Brandom's* semi-Hegelian essay, "Freedom and Constraint by Norms", *American Philosophical Quarterly* 16.2 (1979): 187–96.

⁷⁷ *Rph* § 30.

⁷⁸ *Herman*, *The Practice of Moral Judgment* (op. cit. fnnt. 20), pp. 152, 166, 168, 172, 179, 180–83, 191, 193–94, 196–202.

nal constraint by moral principles mentioned previously, especially if the Categorical Imperative is the supreme practical principle, and if moral considerations do and must take precedence over other considerations if and when they conflict. It is revealing to consider Hegel's *Rechtsphilosophie* as the articulation of our "deliberative field," precisely because Hegel's analysis expressly aims to integrate, as noted above, *all* our drives into a rational system in which autonomy, and hence the legitimacy of action, is paramount.

One key aim of Hegel's explication of our deliberative field is to show, to convince us of, and to bring us to appreciate the vast extent to which principles and institutions of justice, including legitimate law, are *enabling conditions*: only because certain legitimate principles and institutions are established within a society can we as individuals engage in a vast range of activities that otherwise couldn't even be specified, much less executed, nor could we benefit from the many kinds of actions of others which are likewise made possible only by such principles and institutions. In these regards, Hegel recognizes, in effect, that Hume was right that justice is an artifice.⁷⁹ This holds true across the entire range of topics Hegel treats in his *Rechtsphilosophie*, from rights to acquisition, possession, and contract; to juridical determination of wrong; the principles that guide our moral assessment of intention, guilt, intention, welfare; the rights and responsibilities of the exercise of conscience; and the structure of (as well as structures and relations within) the family, civil society, and government, and these all together within the state as a civilly and politically organized whole.

To say that justice is an artifice is not at all to say that justice is arbitrary. Quite the contrary: one key difficulty in rightly understanding social and political principles and institutions is to recognize both that they are artificial, they are literally created by us, although we can only create them legitimately, and we can only create legitimate forms of them, insofar as we fulfill the demanding requirements built into Kant's and Hegel's normative constructivism: To what principles are we committed by even the most elementary free outward actions? To what extent, and precisely how, can those practical principles be legitimated by providing sufficient justifying reasons for them that can address all parties affected by actions based on and guided by those principles? While we are free to create and to re-create these principles and institutions (and their correlative obligations and permissions), we can do so legitimately only insofar as we answer to each and everyone's rational agency and autonomy. Because these demands are so enormous, it is no surprise that both Kant and Hegel looked to historical reform and progress in improving the justice of our actual principles and institutions.

⁷⁹ I discuss some thematic links between Hegel's *Rechtslehre* and Hume's account of justice in K. R. Westphal, "Von der 'Konvention' zur 'Sittlichkeit'. Humes Begründung einer Rechtsethik aus nach-kantischer Perspektive", in: D. Heidemann & K. Engelhard, eds., *Ethikbegründungen. Zwischen Universalismus und Relativismus*, Berlin: DeGruyter, 2005, 153–180.

VII. Conclusions

I hope these reflections further illustrate and at least to that extent reinforce my thesis that Hegel adapted his justificatory methods directly from Kant's constructivism about normative principles. I hope further that they clarify why and how Hegel sought to develop his deeply kantian programme in *Rechtsphilosophie* beyond the scope of Kant's *Rechtslehre*. Hegel sought to address two key questions omitted by Kant's focus on "how" principles of right are possible, on the one hand, *whether* they are possible, and on the other, when or under what conditions they are required (necessary). Addressing these two questions adequately requires, as Hegel realized, reintegrating Kant's constructivist approach to justifying norms and institutions within the broader, pre-Kantian Modern natural law tradition, though it also requires greatly updating traditional empirical data with the rich findings of Scottish political economy. Doing this, Hegel saw, allows for an immanent doctrine of duties and a much richer and far more adequate account of the principles of government. These results provide, in turn, for a much richer and more comprehensive account of individual human freedom and autonomy.⁸⁰

Zusammenfassung

Hegel hat sich an Kants praktischer Philosophie gerade die kraftvolle Art der Konstruktion bei der Identifizierung und Rechtfertigung von Normen zu eigen gemacht, wie kürzlich von Onora O'Neill gezeigt wurde. Falls dies so ist (und ich habe an anderer Stelle dafür argumentiert, dass es sich so verhält), fragt sich, worin denn Hegels eigener Beitrag zur praktischen Philosophie bestanden haben mag. Die vorliegende Untersuchung beantwortet diese Frage, indem sie Kants und Hegels Sicht von Ziel und Struktur der praktischen Philosophie analysiert und fragt, was erforderlich ist, um spezifische Pflichten zu bestimmen. Diese Thematik ist weiter untergliedert durch eine Untersuchung der folgenden Probleme: Zwei Versehen bei Kants Rechtfertigung des Rechts zum Besitz (§ 2), die Rolle der philosophischen Anthropologie in Kants Verallgemeinerungstest (§ 3), die Rolle sozialer Institutionen bei der Spezifizierung unserer ethischen Pflichten (§ 4), Kants unterentwickelte Auffassung von Regierung (§ 5) und Hegels Behauptung, dass im Unterschied zu Kants *Rechtslehre*, seine *Rechtsphilosophie* eine „immanente“ Pflichtenlehre zur Verfügung stelle (§ 6). Ich behaupte, dass Hegel versucht hat,

⁸⁰ It is a distinct honor and pleasure to contribute this essay to this *Festschrift* for Joachim Hruschka. It is an honor, because Professor Hruschka's effortless and illuminating combination of historical, philosophical, legal and juridical approaches to issues in practical philosophy, together with his deeply informed, broad-ranging and inquisitive intellectual style, are exemplary. It is a pleasure to acknowledge here my sincere gratitude to the editors of the *Jahrbuch für Recht und Ethik* for their long-term interest in, and support and encouragement of, my unconventional research in practical philosophy.

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Kenneth R. Westphal

auf seine eigene Kritik an Kants Kategorischem Imperativ zu antworten, und dabei einen Beitrag zur Praktischen Philosophie in einer Weise geleistet hat, die es verdient, von Kantianern und anderen Moral-, Sozial- und Rechtsphilosophen ernst genommen zu werden.

[14]

HEGEL'S THEORY OF MORAL ACTION, ITS PLACE IN HIS SYSTEM AND THE 'HIGHEST' RIGHT OF THE SUBJECT

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ABSTRACT: There is at present, amongst Hegel scholars and in the interpretative discussions of Hegel's social and political theories, the flavour of old-style 'apology' for his liberal credentials, as though there exists a real need to prove he holds basic liberal views palatable to the hegemonic, contemporary political worldview. Such an approach is no doubt motivated by the need to reconstruct what is left of the modern moral conscience when Hegel has finished discussing the flaws and contradictions of the Kantian model of moral judgement. The main claim made in the following pages is that the critique of 'subjective' moralities is neither the sole nor even the main reason for the adoption of an immanent doctrine of ethics. This paper will look to Hegel's mature theory of action as motivating the critique of transcendentalism rather than merely filling in the hole left when one rejects Kant and it will discuss what the consequences of this approach are for the role of the moral conscience within the political sphere, arguing that Hegel's own conditions of free action would not be met unless the subjective moral conscience was operative in the rational state.

KEYWORDS: Hegel; Kant; Action Theory; Sittlichkeit; Immanent Doctrine of Duty; Moral Conscience; Empty Formalism; Social Ethics; Free Action; Responsibility; Retributivism

I INTRODUCTION

There is at present, amongst Hegel scholars and in the interpretative discussions of Hegel's social and political theories, the flavour of old-style 'apology' for his liberal credentials, as though—prior to any attempt to engage with the social ethics he proposes—there exists a real need to prove Hegel holds basic liberal views palatable to the hegemonic, contemporary political worldview.¹ And this almost ubiquitous defensive attitude is present even in the face of a marked absence of convincing, contemporary avowals of the opposite, as though the default starting position is to assume that Hegel is a con-

1. The most obvious example of this 'apology' style of writing is to be found in Westphal's attempt to prove beyond doubt that Hegel is a 'reform-minded liberal' (p. 234), see Kenneth Westphal, 'The Basic Context and Structure of Hegel's *Philosophy of Right*', in F. Beiser (ed.), *The Cambridge Companion to Hegel*, Cambridge, Cambridge University Press, 1993. There is putative assumption that conservatism is bad, an attitude which is perhaps mistaken, but I do not have space to elaborate on this here. It is admittedly a 'contested' concept.

servative or reactionary who distrusts the capacity of the modern subjective conscience to interrogate and legitimate social laws, conventions and institutions (that is, right in its broadest sense).² The putative motivation for such an understated presentation of Hegel's endorsement of subjective conscience within the limits and requirements of a rational state is perhaps due to two factors: one, the historical, yet false, understanding of Hegel as a conservative³; and two, one of the methods for understanding Hegel's ethics is to reconstruct what is left of the modern moral conscience when the philosopher has finished discussing the flaws and contradictions of the Kantian model of moral judgement and motivation.⁴ Although this is a fruitful and largely correct approach, it ignores the fact that Hegel's theory of action motivates the critique of transcendentalism rather than merely fills in the hole when one rejects Kantian ethics.⁵

To state clearly and unequivocally what the major claim of this article is, I hold that the critique of 'subjective' moralities in general and the critique of Kantian ethics in particular is neither the sole nor even the main reason for the adoption of an immanent doctrine of ethics. The rejection of Kant is, after all, only the negative part of Hegel's argument which grounds the idea of *Sittlichkeit*. The positive reason resides in the consequences of Hegel's theory of action and the requirements of the concept of recognition. The transition from the moral point of view to social ethics, that is from *Moralität* to *Sittlichkeit*, in Hegel's system is internally motivated by the position adopted in the discussion of a theory of action in the first part of *Moralität* (which, in turn, is a necessary consequence of Hegel's theory of punishment outlined in the latter part of *Abstract Right*), and not just due to the contradictions that arise from the moral point of view itself. It is commonly held that it is Hegel's continued attack on Kantian morality and, above all, on the empty formalism of the categorical imperative that motivates his postulation of an immanent, as opposed to a transcendental, doctrine of duty.⁶ Hegel

2. The most familiar, if one of the least sophisticated, version of this caricature of Hegel is Karl Popper, *The Open Society and its Enemies* vol. 2, 2 vols., 3rd ed., London, Routledge, 1957, chapters 11 and 12. See Walter Kaufmann, 'The Hegel myth and its method', *The Hegel Myths and Legends*, in J. Stewart (ed.), Evanston, Northwestern University Press, 1996 for a comprehensive rebuttal of Popper. The best and most convincing contemporary account of the charge of philosophical conservatism can be found in Ernst Tugendhat, *Self-consciousness and Self-determination*, trans. P. Stern, London, MIT Press, 1986, chapters 13 and 14.

3. Michael Jackson, 'Hegel: The Real and the Rational', in J. Stewart (ed.), *The Hegel Myths and Legends*.

4. Stephen Houlgate, 'Hegel's Ethical Thought', *Bulletin of the Hegel Society of Great Britain*, 25, 1-17; Dudley Knowles, *Hegel and the Philosophy of Right*, London, Routledge, 2002, chapter 8; Westphal, Kenneth, 'Hegel's Critique of Kant's Moral World View', *Philosophical Topics*, vol. 19, no. 2, 1991, pp. 133-175; Allen Wood, *Hegel's Ethical Thought*, Cambridge, Cambridge University Press, 1990, chapters 9-10.

5. A second method for the discussion of Hegelian social ethics and the role of the subjective conscience resides in the requirements of freedom as put forward in the introduction to PR, so that the conditions of subjective and objective freedom are traced back to the need for the moral subject to be 'at home' in his or her culture. See Michael Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation*, Cambridge, Cambridge University Press, 1994; Frederick Neuhouser, *Foundations of Hegel's Social Theory: Actualizing Freedom*, London, Harvard University Press, 2000; and Alan Patten, *Hegel's Idea of Freedom*, Oxford, Oxford University Press, 1999. I want to reach the same conclusion, but by approaching the problem in the other direction, that is by showing the direction Hegel takes (from free-will, to abstract right, to action, to morality and then to social right) needs to be better understood.

6. For Hegel's criticisms of Kant's moral will, see G. W. F. Hegel, 'On the Scientific Ways of Treating Nat-

proposes that motivations for right action cannot originate nor be derived from transcendental reason, so the story goes, and so the only alternative is that determinations of the will are to be found in the agent's institutional roles within the rational state: the subject's duties are found embedded in *Sittlichkeit*, his ethical substance or moral fabric.⁷ And it is the explicitly social origin of moral motivation which has led to the diverse interpretations and judgements on Hegel's account of the role of the subjective conscience within the rational state which, when coupled with the rejection of the liberal Kantian political programme, ground the accusation of political quietism: if a subject finds liberation through the fulfilment of his social role, then any protest grounded in the moral conscience is seemingly ruled out since to protest is to fail to fulfil one's role. So, alternatively, many Hegel scholars feel the need to celebrate the role of the moral conscience and describe it as a necessary attribute of the rational state and, if it is absent, then neither the individual nor the state is fully free. The aim of this paper is see whether the issue concerning the role of the moral conscience in Hegel's social theory can be answered through an exploration of one of the building blocks in his account of the rational state (that is, his much neglected theory of moral action) and to show the role it has to play in establishing subjective claims at the heart of his social ethics.⁸ The ambitious agenda of this piece is, on the one hand, to demonstrate that the concept of *Sittlichkeit* is not only an alternative to transcendental ethics, but is necessarily entailed by the adoption of the modern moral point of view (in much the same way that the realm of 'Abstract Right' requires the realm of morality to make sense of the concepts of crime and coercion, so, too, does 'Morality' require the concept of an immanent doctrine of duty to make sense of free, human action); and, on the other, to show that the challenge that Hegel is, at best, a quietist and, at worst, a reactionary is incompatible with a proper understanding of his political system as a whole and, hence, stress that the moral conscience is a necessary and integral part of the rational state since, otherwise, Hegel's

ural Law, on its Place in Practical Philosophy, and its Relation to the Positive Sciences of Right', in Laurence Dickey and H. B. Nisbet (eds.), *Political Writings*, trans. H. B. Nisbet, Cambridge, Cambridge, 1999, pp. 102-80, part II (henceforth NL); G. W. F. Hegel, *Elements of the Philosophy of Right*, Allen Wood (ed.), trans. H. B. Nisbet, Cambridge, Cambridge University Press, 1996, §§133-140 (henceforth PR); and G. W. F. Hegel, *Philosophy of Mind: Being Part Three of the Encyclopaedia of the Philosophical Sciences (1830), Together with the Zusätze*, trans. William Wallace and A. V. Miller, Oxford, Oxford, 1971, §§508-512 (henceforth EPM). For the contemporary debate itself, one should refer to Henry Allison, *Kant's Theory of Freedom*, Cambridge, Cambridge University Press, 1990, especially chapter ten; Karl Ameriks, 'The Hegelian Critique of Kantian Morality', in B. den Ouden & M. Marcia (eds.), *New Essays on Kant*, New York, Peter Lang, 1987; Christine Korsgaard, *Creating the Kingdom of Ends*, Cambridge, Cambridge University Press, 1996, chapter three; Onora O'Neill, *Constructions of Reason*, Cambridge, Cambridge University Press, 1989, part two; Timothy O'Hagan, 'On Hegel's Critique of Kant's Moral and Political Philosophy' in S. Priest (ed.), *Hegel's Critique of Kant*, Oxford, Clarendon, 1987; Robert Pippin, *Idealism as Modernism* Cambridge, Cambridge University Press, 1997, part one; Kenneth Westphal, 'Hegel's Critique of Kant's Moral World View', *Philosophical Topics*, vol. 19, no. 2, 1991, pp. 133-175 and Allen Wood, 'The Emptiness of the Moral Will', *Monist* vol. 72, 1989, pp. 454-483.

7. Such a story does not tell us why other alternatives are not considered: motivations of a moral sense, human nature, pleasure and so on. Of course, Hegel does, see most notably NL and PR §140 R.

8. Knowles, *Hegel and the Philosophy of Right*, pp. 362-63; Michael Quante, *Hegel's Concept of Action*, Cambridge, Cambridge University Press, 2004, p. 1. Quante's own book goes a long way to rectify this neglect.

own conditions of free action would not be met.

2 THE THEORY OF ACTION

My main claim in this section is that Hegel offers, in his mature lectures on right (PR §§ 105-140; EPM §§ 503-12), a hermeneutical theory of action. Acts express something particular about the agent by communicating his or her intention to an ideal other who, to use an apt metaphor, is able to 'read' the inner self from the outer expression.⁹ The advantages of this reading reside in its consistency with the Hegelian concepts of recognition and homeliness as well as grounding the necessary existence of the modern, moral conscience implicitly within the fully rational state.

It is pertinent to begin with an idea of what we would expect from a theory of action. In the first instance, a theory of action ought to be able to adequately identify a subset of events properly described as acts from a more general set of occurrences. Hegel, like any theorist of action, starts from the simplest intuition: the subset of events that are properly termed actions are those that are brought about by an agent. So, in its simplest form, a theory of action will identify those events which the agent *does* as actions. The formal way to conceive of an action is any event for which the agent claims responsibility or identifies as his or her *own* (PR § 115). The idea of *responsibility* put in play at the outset reveals what we should expect from Hegel: he is ultimately interested in the evaluation and justification of actions (moral action), and not just the explication of action (action *per se*).¹⁰ His theory of action arises from a consideration of the responsible subject.

The emphasis on the evaluation of actions is consistent with the claim that Hegel is concerned with full blooded or moral action and not just human action and is supported by the location of his discussion of action within his lectures on right. The transition embodied in the chapter on 'Morality'—that is the systematic developmental and historical transition from *person* to *moral* subject—arises from the requirements of abstract right and, in particular, punishment. For once an individual person has rights and a territory (covering both physical integrity and private possessions), then violations of this legal space require reparation. Intentional behaviour *demand*s to be treated differently from accidental damage (a flood), the consequences of animalistic (wild savagery), immature (the infant who decides to colour in one's favourite Persian rug) or neurotic behaviour (kleptomania) (PR § 99 A). The criminal is differentiated from all these other (merely) grammatical subjects due to the responsibility he bears for his own will and our treatment of him depends upon the proper interpretation of an intentional action: to what extent is the criminal responsible and what, then, is the appropriate response. The concepts of 'Abstract right' are inadequate to deal with the proper response to crime and even hard placed to differentiate between crime and deception (PR § 103). Such evaluation requires a theory of action with its explanation of how, when and to what

9. A very good account of this type of theory is Paul Ricoeur, 'The Model of the Text: Meaningful Action Considered as a Text', in *Hermeneutics and the Human Sciences* trans. J. Thompson, Cambridge, Cambridge University Press, 1981.

10. See the introduction to Quante, *Hegel's Concept of Action*.

extent the subject is responsible for his or her actions and the 'person' identifies only the individual will, independent of the clan or tribe, which has a given rather than a chosen content. For Hegel, then, a discussion of morality in its broadest sense is entailed by the rights and prohibitions of 'Abstract right' because the discussion of action in that section is formal and at odds with his retributivist justification for punishment (LNR § 56).¹¹ If action were merely caused by the content of one's will, then punishment could only be a form of deterrence or rehabilitation. The person who acts due to neurosis or genetic predisposition, that is the person who could not have done otherwise, is not responsible in any robust sense. As such, the aim of punishment practices would be either to protect others from his behaviour (like building a sandbag wall to protect property from a flood) or to change the person's behaviour (as one would domesticate an animal). But, punishment is most rationally comprehended as retribution and such a concept requires the notion of responsibility and moral desert to be rationally grounded (EPM § 503).

Hegel summarizes his theory of moral action in one dense paragraph which sets out the conditions of moral action pertaining to a *subject* as opposed to action pertaining to a *person*:

The expression of the will as subjective or moral is action. Action contains the following determinations: (α) it must be known by me in its externality as mine; (β) its essential relation to the concept is one of obligation; and (γ) it has an essential relation to the will of others (PR § 113).

The first determination (α) is familiar: an event is an action if the agent's intention plays a causal role and the agent is aware of it. The right of knowledge (α) is the condition that the agent must recognize an event as being produced by him or herself for it to be an action as opposed to an event.

Freedom is understood as freedom-in-itself in 'Abstract right': a person is free if he or she can satisfy personal wants and desires even if these wants are immediate inclinations or blind obedience to the dictates of authority. Yet, even within this sphere, it is possible to distinguish actions from mere events: 'Its utterance in deed with this freedom is as action, in the externality of which it only admits as its own, and allows to be imputed to it, so much as it has consciously willed.' (EPM § 503) Only those events admitted as one's own are actions, that is events to which the agent ascribes himself or herself as the author. Such self-ascription is, in the first instance, nothing but the identification of a reason conceived of as an intention in the set of causal conditions necessary for bringing about the event (EPM § 504). Thus, the agent can distinguish between deliberately knocking a man off his ladder ('I wanted to because he had ogled my wife') and involuntarily knocking a man off his ladder ('It wasn't my fault, I tripped on the carpet.')

¹² The

11. G. W. F. Hegel, *Lectures on Natural Right and Political Science: The First Philosophy of Right: Heidelberg, 1817-1818, with Additions From the Lectures of 1818-1819*, trans. J. Michael Stewart and Peter C. Hodgson, Berkeley, University of California Press, 1995. See David Rose, *Hegel's Philosophy of Right*, London, Continuum Press, 2007, pp. 69-77.

12. To reinforce this understanding, Hegel distinguishes between the deed and the action. Wood, *Hegel's Ethical Thought*, p. 140 sees no significance in the use of the word 'deed', whereas Quante, *Hegel's Concept of Action*, p. 105 claims that 'deed' captures the event-event characterization of actions and 'action' the moral

subject is responsible for the occurrence to which the predicate 'mine' can be attached and which is traceable to the subject's intention. If we can reconstruct a desire and belief as an intention that played a causal role in bringing about the event, then we can identify an action (PR § 115).

However, Hegel wants subjects to be held responsible for their actions in order to distribute praise and blame as demanded by the retributivist theory of punishment. The first determination of free action on its own is unable to fulfil this goal since it 'fails to cast the agent in his proper role'.¹³ Reasons, that is dispositions and beliefs, *cause* an intention which *causes* an action, but the agent just does not feature and it is agents we hold responsible and not their beliefs and dispositions. So, reasons must effect something (viz. an agent) in order to become intentions and since reasons do not always produce the same intention in differing agents, something is missing in the causal explanation in order to make it plausible. Of course, one could cite the agents' differing webs of beliefs as the differentiating factor in diverse responses, but it is still possible for an agent to be moved by beliefs *despite himself*. Cases such as coercion and addiction feature an agent who is in accordance with the standard model ('I believe the robber's gun is loaded and I do not want to die'; 'I am in a state of wanting and I believe that the drug will alleviate this'), but, phenomenologically, these stories do not seem to capture the real nature of human action.¹⁴ It makes intuitive sense to say that 'it was not me' or 'I wasn't acting on my own will' and such statements do have a legal—if not metaphysical—resonance. Coercion and addiction have been problematic for the empiricist model since Hobbes and the only real response is to say that the model of action proposed explains, but does not evaluate the actions of agents in terms of intentions. Evaluation must rest on controversial doctrines such as free-will or responsibility and these concepts play no role in the explanation of action.¹⁵ In other words, there is no way on this simple causal model to distinguish *human* action or *full-blooded* action from *animal* action or *non-intentional* action. The distinction between animal and human action maps neatly onto the Hegelian *person* versus *subject* dichotomy: with the former, the content of the will is given, whereas with the latter the content is chosen and hence is the subject's in the genitive sense. Hegel captures this determination of full-blooded moral action with his second determination (β).

The phenomenology of human action involves reference to the agent and the empiricist model appears to negate this aspiration. To account for cases of coercion and false consciousness, the subject has to freely endorse his or her end for the action to be

element ($\alpha + \beta$).

13. David Velleman, 'What happens when someone acts?', in *The Possibility of Practical Reason*, Oxford, Oxford University Press, 2002, p. 123.

14. Harry Frankfurt, 'Coercion and Moral Responsibility', in *The Importance of What We Care About*, Cambridge, Cambridge University Press, 1988.

15. 'Hegel regarded the metaphysical conflict between freedom and determinism as basically a pseudo-problem generated by importing mechanical accounts of causality into the domain of action, where they are inappropriate. Understanding and explaining action requires teleological explanation, of both functional and purposive varieties.' Westphal, 'Hegel's Critique of Kant's Moral World View', p. 148.

properly his or her own. Hegel puts this in terms of obligation: the intention is to be known as a good-for-me (β). In the case of coercion, the bank teller has a conflict of goods: self-preservation versus fulfilling his role. The former motivation trumps the latter but the agent is not free because he is not acting from his own will, it is the presence of an external factor which obstructs his free action.

What is more Hegel's motivation for formalizing a theory of action is, as has already been stated, so that punishment practices can be rationalized. Both of the statements 'I did it' and 'It was an act I brought about in the world' seems to invoke the agent in the causal chain and not just elements (beliefs and dispositions) which can be identified with the agent. The difference between a person and a subject is that he or she must somehow endorse those actions as his or her own. What Hegel recognizes about a pure causal explanation is that it is only partial and cannot, if lauded as the be all and end all of human action, supply the foundations for proper moral evaluation. Hegel's account needs to talk of actions and degrees of agent participation in order to distinguish between cases of coercion, deception and crime. For, although it is able to explain an action, the causal model's explanations are inadequate to ground an evaluative judgement. One needs to move away from the person (a collection of given dispositions and beliefs) to the subject (the agent who is 'at home' with his intentions and motivations):

Freedom is only present where there is no other for me that is not myself. The natural man, who is determined only by his drives, is not at home with himself; however self-willed he may be, the *content* of his willing and opining is not his own, and his freedom is only a *formal* one (EL § 23 A2).¹⁶

The natural man (and the person) is akin to the coerced agent and all are 'self-willed': free if he is able to act on the content of his will and not free if he is obstructed from doing so. However, there is no full responsibility since the content of the will is given and ultimately no different from external causes, psychoses, neuroses and the will of others imposed on one. Full blooded human action involves the proper recognition that what one did, one wanted to do and would justify it if asked.

Hegel expresses these very sentiments in his second determination (β). The animal has no choice but to obey its desires, neither does the small child; they bear little responsibility for their actions. Subjective freedom for them—like the person—resides in the satisfaction of the will's desire *whatever* its content may be. Human action is different in that certain desires and preferences are privileged even if they are not so pressing and these can be articulated as values.¹⁷ Furthermore, values need not be exclusively moral since responsibility concerns all self-regarding actions (self-interest, prudence and morality). The process of the rationalization of desires permits the recognition of the 'good' of the subject's purpose, be it moral or prudential, and he perceives it not only as

16. Hegel, G. W. F., *The Encyclopaedia Logic* (1830), with the *Zusätze: Part I of the Encyclopaedia of Philosophical Sciences with the Zusätze*, trans. Theodore F. Geraets, W. A. Suchting, and H. S. Harris, Indianapolis, Hackett, 1991 (henceforth EL).

17. The contemporary characterization would be second-order desires. See Harry Frankfurt, 'Freedom of the will and the concept of a person' and Charles Taylor, 'Responsibility for self' both in G. Watson (ed.), *Free Will*, Oxford, Oxford University Press, 1982.

a desire to be satisfied (personal freedom) but a desire worth satisfying (moral freedom). And this means we can now evaluate rather than just explain an action. We identify the role of the agent's intention in the causes bringing about the event, and then are able to say whether or not the action is properly the agent's own if he or she wanted it to be the case (that is, posits it as a purpose). Responsibility requires that subjects self-consciously know and freely choose their purposes for the predicate 'mine' to be attached to the action. An explanation of action requires no real notion of freedom, but an evaluation of action does. In dialogue, the actor would admit what he did as his own and his good and not the good of an alien will acting through him (coercion, false consciousness, and so on).

And the significance of 'homeliness' dovetails with the second consideration of the location of the discussion of action in the lectures. Hegel's theory of action mediates the sections 'Abstract Right' (the recognition and identification of individual persons as rights-bearers with particular desires) and 'Ethical Life' (the positive duties and obligations of the citizen in the rational state). Without the historical and philosophical emergence of the person (a distinct and discrete element of the tribe), there would be no possibility of the subjective freedom of 'I (as individual) want x' and without the immanent doctrine of duties proposed by *Sittlichkeit*, the good-for-me and the good-for-all of the rational social being would not be harmonious and free. The Ancient Greeks had a one-sided existence and were not fully free because the ethical substance they inhabited was, in some sense, not theirs. Their social fabric and values were justified in themselves, but the agents motivated by them took the values as given and natural (LPH 106-7).¹⁸ The subjectivity of the person (this is 'my' good irrespective of the dictates and roles of my social existence) is also one-sided since although the content of one's will is one's own, it is not necessarily rational and if unconstrained by moral concerns would lead to disastrous social atomism (PR § 236 R). The subject, the moral point of view, demands more than the wishes and aspirations of the mere person: he or she is aware that actions have to obey positive obligations, the 'good', to truly express his or her identity to others. Moral freedom is a precondition of social freedom: ethical life is not mine until I as moral agent recognize it as a good and in order to do this, I must be a moral agent who can rationally endorse it. To be 'at home' in one's social fabric is to recognize one's rights and duties as one's own and rational and this requires the capacity of doing or being otherwise, a possibility inconceivable to the Ancient Greeks.

The transition from Person to Moral (in a broad sense) Subject allows one to distinguish between fully free actions and coerced actions:

Particular self-determination, as the inward self-determination of the will that is for itself, and as a mode of self-determination that is intended to be realized, is known by the subject and is its *purpose*; [it is] a judgment that in its determinacy comprises universal thought. The *disposition* is the universality as belonging to the subject; and, as singled out and set apart on its own account, it is the *maxim* of the

¹⁸ G. W. F. Hegel, *The Philosophy of History*, trans. J. Sibree, New York, Dover Publications, 1956 (henceforth LHP).

subjective will. Once right is enacted, the disposition is of no essential significance for it (LNR § 53).

The identification of me in the action is as a self-willed unit. The responsibility of the agent resides in bringing about those purposes which are his own and trying to falter those that are not. I am responsible for actions that emanate from reasons that are my own.¹⁹ Reasons that are my own are best conceived of as purposes: purposes correspond to what the agent sees as good and the bank teller who gives money to the robber does not see this as a good even if he has a reason playing a causal role in why he gives money to the robber. He can explain why he did it, but he can—intelligibly—state that he did not want to do so because it was contrary to the obligations of his institutional role. And the Kantian resonances in the above quotation cannot be ignored: both the weak-willed bank teller who submits to the robber and the strong-willed one who does not can explain their actions in terms of dispositions (fear and rectitude respectively), but only the latter can separate a maxim worthy of moral approbation.

So, the second determination, (β), is seemingly consistent with Kant and the evaluation of the agent via their intentions. The idea of intentions and obligations resonates with Kant's good will and the voice of conscience, but Hegel does not want the idea of right to rest on the idea of the otherly out there, that is Kant's transcendental idealism.²⁰ However, at this stage of the argument, the parallels are striking:

This subjective or 'moral' freedom is what a European especially calls freedom. In virtue of the right thereto a man must possess a personal knowledge of the distinction between good and evil in general: ethical and religious principles shall not merely lay their claim on him as external laws and precepts of authority to be obeyed, but have their assent, recognition, or even justification in his heart, sentiment, conscience, intelligence, etc. The subjectivity of the will in itself is its supreme aim and absolutely essential to it (EPM § 503).

Here, Hegel is offering his own version of the Kantian characterization of Enlightenment, and one cannot fail to see the parallel with Kant's earlier portrayal of the spirit of his age as the 'age of criticism'.²¹ It is significant to note that the claim of the Enlightenment is the identifying mark of moral freedom: it is the coming to age of man. To use a traditional analogy, man has grown into maturity and no longer need rely on the dictates of authority or the motivations of immediate inclination (including social character). The subjective ascription of 'good' or value to an end is necessary to free action for Hegel.

Traditionally these two determinations ($\alpha + \beta$) have been held to be necessary and sufficient conditions for free action, yet Hegel adds his third determination (γ): the intention has to be capable of reconstruction by others from the objectivity of the act

19. This is Taylor's understanding of Hegel's theory of action: the human is a purposive being but one whose purposes are known and endorsed by itself. See Charles Taylor, 'Hegel's concept of Mind', in *Human Agency and Language: Philosophical Papers 1*, Cambridge, Cambridge University Press, 1985.

20. Westphal, 'Hegel's Critique of Kant's Moral World View'.

21. Immanuel Kant, *The Critique of Pure Reason*, trans. J. Meiklejohn & revised V. Politis, London, J M Dent, 1993, pp. Aix-xi.

itself. Hegel feels it is necessary to not only retain the traditional concept of the right of knowledge, but also temper it with an objective constraint. One reason he does so is that, ultimately, Kant's picture fails because it cannot generate purposes a priori or resolve conflicting goods, but Hegel does not introduce his famous Kantian critique here. Instead the reader is offered positive reasons for the adoption of an immanent doctrine of ethics grounded in the Hegelian concept of recognition. It is necessary that others recognize the action as one's own. The action must express the implicit humanity (obligation) rather than appear to be a mere, immediate purpose (wilfulness) and this entails that others must concur with me and my description of the good, otherwise they will continue to treat me under the category of personhood or worse. Intention, therefore, requires recognition by others: 'The implementation of my end therefore has this identity of my will and the will of others within in it—it has a positive reference to the will of others.' (PR § 112) The first-person may be the judge of what is good, but his judgement is constrained by the interpretation of the other. The agent has to be aware that his act ought to accord with the expectations of his form of life, otherwise his intention will be either misdescribed or ignored.

One way to characterize this is to say that the justification of one's good or end involves one in the activity of reason-giving and this activity is, for Hegel, inherently social. Affirming what is substantially right and good is not a matter of external, transcendental standards independent of one's peers, but rests on their recognition of the content of one's will in terms of articulated and shared categories of right.²² There are no constraints on a will which justifies a good or a purpose to itself, one is able to convince oneself that anything may be good (PR §140 R). Reasons for action require a degree of objectivity for Hegel and this is based on reasons being a justification for all men who share my way of life rather than just for me; that is, an actual reason rather than just wilfulness and, contrary to Kant, one's role, situation and circumstances all constitute reasons for behaviour. In offering reasons, the agent knows if they are good reasons if he can convince others. It follows from this that the agent's description of his intention must harmonize with the other's interpretation of the act. A man unaware of the way in which a certain act will be interpreted, that is how his reasons for action will be reconstructed (the tourist abroad) is not responsible for any offence caused (although he may still be held culpable).²³ Reciprocally, the agent is only fully free when he is aware how his action will be interpreted. The will of others contained in one's own will is this shared scheme of interpretation in and through which we reconstruct intentions.

The rational reformulation of the initial determinations of action (PR § 113) occurs in a later paragraph which reduces the dialectical trinity to a new symmetry of subjective and objective aspects:

The right of intention is that the universal quality of the action shall have being

22. Neuhauser convincingly traces this element of Hegel's thought back to Rousseau's influence, see *Foundations of Hegel's Social Theory*.

23. His culpability is a legal issue arising from the consideration of what an agent ought to know on setting foot within a state.

not only in itself, but shall be known by the agent and thus have been present all along in his subjective will; and conversely, what we may call the right of the objectivity of the action is the right of the action to assert itself as known and willed by the subject as a thinking agent (PR § 120).

Here we find that self-ascription of intentions, or the right of knowledge (α), is combined with the necessary element of modern moral freedom (β) into the 'right of intention' such that the agent will only be held responsible for those actions deliberately brought about by his or her own will, thus ruling out external causality, neurotic behaviour, coercion, deception and false consciousness. However, in order to recognize one's intentions as 'good' or 'rational' requires the reformulation of (γ) into the 'right of objectivity'. An action is—independently of the protestations and affirmations of the agent him or herself—to 'stand in for' or 'represent' the will of the agent in the 'outer' world, just as the word uttered in language is assumed to be a sincere representation of the thought and will of the speaker who is present. If the agent wishes to be understood as a free moral agent, then he or she must be aware that an action requires a commitment to the medium through which others will understand it. So, in order to affirm one's freedom, there must exist a minimum level of expectation which must be met. If the subject's acts are to be the expression of inwardness, then he must be certain that the other is going to reconstruct them faithfully. Both actor and interpreter must, therefore, share a common understanding of the way in which acts are to be rendered intelligible.

The first two determinations of free action are not sufficient to justify an action because, without the moment of certain *recognition* of the moral will, the agent cannot be held fully and morally responsible as demanded by the retributivist theory of punishment. Recognition, it ought to be recalled, is not just granted by the struggle to death, even if that story makes stark what is at stake: I demonstrate to you that I am free over and above my desires by risking the most fundamental drive for the sake of a principle (PS ¶¶ 178-196).²⁴ Such recognition of one's essential rationality and humanity can alternatively be granted by marriage, whereby the agent sincerely places altruistic and universal needs over particular and egoistic ones (PR § 162). Without the self-certainty granted by knowledge of the inter-subjective categories of the right of objectivity, the subject would be unsure whether or not he has been properly recognized or if his intention can be reconstructed faithfully from his action. In a rational social order, the agent knows the good in question because it is made immediately available to him through fulfilling his roles in the family (parent, child), civil society (worker) and the state (citizen). If I wish to be known as a good father, then my acts must accord with those judgements which accompany a good parent (love, generosity, discipline) and not those which are generally frowned upon (indifference, prodigality, severity). The significance of the right of objectivity resides in the certainty of recognition and one's social fabric is a liberation

24. G. W. F. Hegel, *The Phenomenology of Spirit*, trans. A. V. Miller, New York, Oxford, 1977. See Alexandre Kojève, *Introduction to the Reading of Hegel*, 2nd ed., trans. J. Nichols, London, Basic Books Inc., 1969 and, for a full discussion of the concept of recognition, see Robert Williams, *Hegel's Ethics of Recognition*, London, University of California Press, 1997.

because it makes possible—and does not inhibit—free moral action.

The conclusions to the all too brief discussion of Hegel's theory of action are not to be underestimated. The right of knowledge (α) is familiar from most theories of action, but the right of intention (α combined with β) makes it obvious that the moral conscience, that is the subject's right to decide his or her good—in which values he or she feels 'at home'—is a necessary condition of the rational state for without it rational, free action would not be possible and Hegel's theory of punishment would be incongruous. Hence, any institutions or practices of the state which motivated citizens without being evaluated by the standards of personal freedom would make it impossible to feel 'at home'. The right of objectivity (γ) sets the limits and conditions of possible subjective endorsement: any deviation from the norm must be justified by familiar standards and not by an appeal to mere wilfulness. One cannot rely on an incoherent noumenal realm to dictate right action and good ends, but one can interrogate one's social roles and meanings for a way to express one's particularity through a universal medium.²⁵

And here one should take note of the fact these discussions, prior to any substantial consideration of Kantian or subjective ethics, invite the Hegelian reader to appreciate the moral conscience as necessary and operative in the rational state as well as recognizing that ethical action entails an immanent and not transcendental doctrine of duties, although the latter claim has still to be made apparent. For these points cast light on one of Hegel's most controversial remarks:

The right to recognize nothing that I do not perceive as rational is the highest right of the subject, but by virtue of its subjective determination, it is at the same time formal; on the other hand, the right of the rational—as the objective—over the subject remains firmly established (PR § 132 R).

Subjective social freedom, the moral conscience of the citizen, is necessary for the subject to feel 'at home' within his or her state and is, hence, the 'highest right'. Yet, if it is unable to generate the 'good' from its own reason, it must rely on the objective freedom of *Sittlichkeit* as those shared meanings and values operative in the practical reasoning of oneself and one's peers coupled with those social practices and material arrangements which make self-determination possible.²⁶

3 THE NECESSITY OF THE RIGHT OF OBJECTIVITY FOR RESPONSIBILITY

In his lecture notes, Hegel introduces the right of objectivity and its relation to the rational order prior to the critique of Kant in particular and subjective moralities in general. The latter arguments are supposed to *support* the already articulated claim that free, moral action is impossible without a medium of immanently shared values and

25. Here is a rather playful, but illuminating example. Without the rules of football, the determinations that dictate right action on the field of play (rules and expectations in their broadest sense), Maradona would never have been. Yet, nothing about those rules, expectations and history could have determined what was unique about him.

26. Neuhouser, *Foundations of Hegel's Social Theory*, chapter 5.

good rather than *ground* it. One could imagine a hand being raised in the class room and a courageous student asking Hegel whether he had considered the alternative that right action could be known and willed by the subject from reason alone. To which, the professor would reply with the negative reason for the appropriation of an immanent doctrine of duty: the point by point attack on transcendental morality.²⁷ It would be pertinent just to offer a brief reminder of these points, as Hegel presents them: one, the subjective will cannot overcome conflicts of duty (whether generated by different kinds of duty or self-interest and duty) (EPM § 508-9); two, the moral point of view has to be constrained because it is infinitely powerful and can posit (or negate) any good whatsoever as universal good. (EPM §§ 510-11; PR § 140); and, three, the subject is unable to generate determinations of the will out of his reflective understanding, its abstractness needs to be overcome by objective determinations (EPM §§ 506, 508; PR § 135).

Hegel is oddly (for once) making an appeal to our intuitive grasp of the phenomenon of moral action. Take the tired and worn out old example of the mother who has to decide whether or not to steal to feed her starving child. The immediate determination of the family, the naturally binding duty of the maternal bond, gives rise to the desire to protect, feed and sustain the child. This is the good-for-mother. Yet, her role in civil society determines that she recognize the rationality of the right to property and this, too, is a good. The universality of good means that these two goods should harmonize, yet the moral conscience is quite able to accept one as right at the expense of the other in one moment, then—in the next second—to reverse such a description. For Hegel, the moral conscience itself cannot decide between conflicting determinations of the will and, if it does so, such a decision is wholly arbitrary and wilful. And if this is the case, then there is no standard by which the agent can be distinguished from the person who acts on a given content of the will (PR § 17). Hegel's solution is to make a demand on one's immanent set of duties and values and ask what it is that gives rise to the conflict in the first place. That a child be fed is a good and that the right of property be respected is a good, so such a society in which a conflict between these two is felt, is *not* rational. The conflict can only be overcome when objective freedom, granted by the institutions of ethical life, eradicates the existence of the mother's need to steal and her subjective freedom can be satisfied. (Through the supply of basic needs as a right (the welfare state) and the eradication of poverty, or legal recognition of her subjective freedom adjudicated in a court.)

Hegel realizes that the abstract nature of the good cannot be created from the top down and theoretically tested. It is not truly possible for the agent to declare what the world ought to be like in all certainty given the dictates of reason. Instead, the moral subject must begin from the existing world and its institutions since the constraint of objectivity involves the idea that the good must be intelligible to these institutions since the judgements of my peers is necessary for my action to be free. Only in such a way can subjective freedom meet the constraint of objective freedom and, reciprocally, it is this

27. See Ameriks, 'The Hegelian Critique of Kantian Morality', and Westphal, 'Hegel's Critique of Kant's Moral World View'.

very objective freedom which grants the subject the certainty of recognition he requires to satisfy his actions. Therefore, it is only the ethical person who is truly free:

The ethical person is conscious of the content of his action as something necessary, something that is valid in and for itself, and this consciousness is so far from diminishing freedom, that, on the contrary, it is only through this consciousness that his abstract freedom becomes a freedom that is actual and rich in content, as distinct from freedom of choice [*Willkür*], a freedom that still lacks content and is merely possible (EL § 158 A).

The objective freedom of ethical life makes possible the satisfaction of rational desires, projects and aspirations and this is an elaboration of the right of objectivity present in the abstract theory of action; a right which renders apparent the requirement of shared categories from which the subjective intention can reliably be reconstructed (as in the case of the mother). Ethical life is the substantial description of the possible determinations of one of its members and is, then, liberation because it purifies and rationalizes the drives of the individual (PR § 19). Objective freedom is freedom because it liberates the subject in three ways: one, from a dependence on immediate drives; two, from having to produce the categories for comprehension (values, rights and duties) for himself *ex nihilo*; and, three, from the need to determine good from his own conscience (PR § 149). The three institutions of modern society—that is, the liberal, bourgeois family, civil society and the modern political state—all combine to fulfil these conditions of objective freedom. It is these determinations of ethical life which constitute the objective freedom of the subject in that they enable him to satisfy his desires, wants and aspirations, to simultaneously pursue the good and to be certain of recognition by the other (EPM § 538). Hegel's claim, then, is that the subject as he has described it in 'Morality' can only be fully free when his or her objective freedom is secured by these modern institutions.²⁸ *Sittlichkeit* is, in one of its aspects, the world constructed by social reasons for actions.²⁹ It supplies motivations and obligations for the agent in virtue of his membership and his role in this institutional order and also makes possible recognition of him as a free-self-determining being (PR § 151; EPM § 513).

An immanent doctrine of duties and values overcomes the abstract and formal nature of the 'ought' which results from the subjective will: 'Thus, without any selective reflection, the person performs duty *as his own* and as something which *is*; and in this necessity *he* has himself and his actual freedom' (EG § 514). The member of *Sittlichkeit* can perform his duties—possibly from habit, that is without any 'selective reflection'—because they constitute his identity and he feels 'at home'. It is not how he *should* act, it is how he *does* act (I drive on the left because I am English) and he can be certain of recognition as an agent through fulfilling the dictates of these roles:

All these substantial determinations are *duties* which are binding on the will of

28. I have not argued in this essay why it has to be these three institutions, neither do I feel that there are no other alternatives (or, in fact, that these are actually absolutely rational in Hegel's sense). But these remarks cannot be discussed here.

29. It must also be the material conditions necessary for free, self-determining action.

the individual; for the individual, as subjective and inherently undetermined—or determined in a particular way—is distinct from them and *consequently stands in a relationship to them as to his own substantial being* (PR § 148).

The certain recognition of free action is made possible by the objective social order embedded in institutions coupled with the substantial identity of the agent as a member of these institutions, but the above quotation makes clear that the right of intention is still significant. The modern subject, unlike the Greek citizen, is ‘inherently undetermined’ and ‘distinct’ from his ‘own substantial being’. According to Hegel, if one is committed to the evaluation of actions (and one must be if one is postulating a retributivist theory of judgement), then this commitment entails an immanent doctrine of duties, values and meanings; that is, *Sittlichkeit*.³⁰

4 THE DANGERS OF THE PURELY OBJECTIVE WILL

The aim of this paper was to show that Hegel’s immanent doctrine of duty arose not just from his rejection of transcendental ethics but also from his own account of human moral action. I believe I have shown above that Hegel’s theory of action necessarily requires objective freedom which can only be supplied by *Sittlichkeit* even if I have not gone into the fine details of his account of ethical substance. In justifying this claim it was also hoped that the limits of the moral conscience within the rational state could be delineated and its power described.

The worry, of course, arises from the above quotation where Hegel tells us that *Sittlichkeit* is immediately motivating through habit or second nature ‘without any selective reflection’ (EPM § 514). The right of the rational, after all, was to be ‘firmly established’ and it is clear that Hegel’s theory of action implicitly involves the notion of *Sittlichkeit* in that the moral agent requires objective determination to be certain of recognition and, hence, to be fully responsible. In order to be recognized as free my action must meet the expectations of my peers, yet this seems to implicitly rule out any abnormal behaviour and protest is, one would assume, always a break from the norm and the expected.³¹ It is the objective, rational structure of Hegel’s account of *Sittlichkeit* which grounds the con-

30. I do not want to give the impression that ethical life is merely a form of life which determines and harmonizes the good, *rather it is the rational order of determinations of the will*. The difference can be understood in that the former case holds only that the objective, institutional order coupled with the subjective knowledge of these determinations constrain the actions of the subject within the bounds of intelligibility given *whichever* form of life; or just because humans *happen* to exist in communities. Hegel holds, on the contrary, that objective freedom satisfies the requirements of the subjective will through supplying rational determinations and not just determinations.

31. One immediate Hegelian response would be to invoke an objective, absolutist account of the end of history: man inhabits the purely rational state where social and individual good harmonize and do so due to the rationality of the institutions which exist. Objective freedom meets the requirements of subjective freedom and no conflicts between the two can possibly arise. However, it would be necessary to offer a thorough description of the nature of the end of history, to acknowledge that Hegel’s intuitions concerning certain moral problems and our own differ markedly, to admit that it is in no way obvious that modern institutions could deal with future moral problems and, given all these, to reconsider the end of history as purely an objective state of affairs. All of this is well beyond the remit of this paper.

servative strains and themes in his work; he lists, interrogates and attempts to actualize the social institutions which existed in the Prussian state and, at each step of the argument, the subjective right—the ‘highest’ right—of individuals appears to play second fiddle to the role demanded by the institution itself.

Hegel’s strongest critic would intimate that the moral conscience described in *Moralität* is negated in *Sittlichkeit* because the right of objectivity determines that deviations from the normal and expected behaviour of citizen, worker and family member are impossible since these roles exhaust the identity of the individual. The duties of the agent in ethical life are to fulfil his or her roles adequately and freedom consists solely in actions which are in accordance with one’s duties, that is one’s ‘substantial identity’. In this way, one can be recognized by one’s peers and hence be free. Yet, this is seemingly at the expense of the ‘highest’ right of subjectivity which, if enacted in opposition to the ethical norm, can be nothing but mere wilfulness.³²

However, if one is to take seriously the role of the moral theory of action which precedes the account of ethical life, then it is clear that subjectivity still has a role to play in the objective freedom of *Sittlichkeit*. First, if it were true that freedom consisted solely in the fulfilment of one’s role within a state that is rational, then there would be no marked difference between Ancient Greek society and our own (LPH 104-7, 444-5). The concept of ‘homeliness’ derived from the right of intention ($\alpha + \beta$) requires that not only do I act on correct and harmonious determinations of the will, but that I also endorse them as my own. One cannot be coerced into acting freely, for Hegel. Second, within communities that are not fully rational or not even partially so, the subject cannot be free except by resisting the norms and expectations placed on him or her: ‘When the existing world of freedom has become unfaithful to the better will, this will no longer finds itself in the duties recognized in this world and must seek to recover in ideal inwardness alone that harmony which it has lost in actuality’ (PR § 138 R). The right of intention must be effective on the objective order of things and is so through the necessity that the actualization of social ideality requires self-conscious knowledge: the free, rational state is not one in which the institution of slavery could exist; its rationality cannot be actualized as all persons are to be considered equals in the free, rational state (PR §§ 36, 155). Thus, the right of objectivity requires a subjective will capable of endorsing it; that is, finding it rational *for itself*.

When a child wears a seat-belt he does so to safeguard his personhood, but such a reason is rational only in itself. The child actually acts on another reason: to avoid being shouted at by his mother (personhood). As the child grows, however, he comes to realize that the reason for wearing a seatbelt is to protect himself; that is, he recognizes the good as his own and so he is ‘at home’ with his social motivation. He is aware that, not only is he reasonable to his mother and her expectations, but also to himself: this is an act which is rational for him not just his mother. He now has self-knowledge of the reason and it is both in itself rational and also for him rational. Only when objective freedom makes possible the satisfaction of desires which can be freely chosen, known

32. Tugendhat, *Self-consciousness and Self-determination*.

and transparent, is the agent fully responsible. Thus, for fully free, responsible action, the right of knowledge is required and individuals stand in a relationship to their substantial identity but remain distinct from it (PR § 148).

Therefore, the right of intention crucial to free action can be inflated into a form of rational legitimation. The rational system of the will's self-determination, for modern man, is self-conscious knowledge of the underlying necessity implicit in the customs and mores of *Sittlichkeit*. To be 'at home' (as required by the right on intention) involves knowing not only what one does but that it is a good for oneself. It is 'customary' to wear a seatbelt, and one wears it without much 'selective reflection,' but, it is possible to actualize the custom; that is, to make apparent its rationality to the knowing subject. The strong critic of Hegel's social philosophy mistakes 'trust' in one's objective order for blind faith. This difference is best illustrated by Hegel's own distinction between reflective (the state) and unreflective trust (the family) and the possibility to articulate one's reasons for action. If I am to save my child from drowning or, on a lesser scale, to provide for the material needs of my family, I cannot truly articulate the reason why I fulfil this role. The best I can manage is 'Because they are my children.' Moreover, someone who demands that I justify my reasons for these actions is simply inhuman, not in the sense of evil, but in the sense that they cannot truly comprehend what it is to be a human being. These reasons, then, are immediate and unreflective and trust in one's family members is based on the same disposition.³³ The reflective trust in the state is open to scrutiny, though; this is the formal requirement of subjective, moral freedom. It is perfectly sensible to demand a justification of a particular law, social duty or more and why I should act in accordance with it. However, agents rarely demand justification and as such express a reflective trust in their state; its laws and institutions are open to legitimation and the state must make scrutiny by the citizen possible, but this need not be carried through every time a demand on the citizen is made. A useful analogy is differentiation in mathematics. All of us are quite happy to use the formula ' nx^{n-1} ,' but in order for us to be certain it must be possible for us to carry out the calculation from first-principles. The laws of the state are a type of shorthand of the good, but which must remain possible objects of legitimation even when not perpetually legitimated. The subject has 'trust' in the objective social order and its rationality (EPM § 525; PR, § 147). The 'trust' of the Ancient Greeks was inarticulate and, hence, it was mere social luck that they lived in a rational state. Modern ethical life *makes possible* the satisfaction of subjective freedom, rather than—as many commentators hostile to the Hegelian picture suppose—*determining* the content of subjective freedom. It is no longer a matter of 'luck' that we live in a rational state since without the subjective endorsement of the morally free agent, the duties of *Sittlichkeit* are not actual duties (PR § 138 R).

The proper consideration of the right of intention seems to put pay to the strong criticism of Hegel's social philosophy, but this idea is rarely the motivation behind the apologist approach of many of his supporters. A more subtle challenge to the relation-

33. This is perhaps why the abuse of children by their parents is such a reprehensible crime, there is a certain element of inhumanity in it which horrifies us.

ship between the moral conscience and the state would propose that, if reason giving is inherently social as Hegel holds, then surely the tendency will be—in cases of conflict between individual good and social good—to side with the familiar and conventional. With the stronger form of the challenge, social protest is impossible and irrational, but this is to negate absolutely the ‘highest right’ of the subject. The weaker form of the challenge does not fully negate the right of knowledge: one is able to deny the determinations of one’s role when one cannot endorse its rationality. However, given that this endorsement is a social practice, protest stemming from the moral conscience is ultimately mute since the right of objectivity, that my actions be rational for others, implicitly commits Hegel to conservatism. Endorsement amounts to nothing more than yes-saying: the subject reflects upon his duties and recognizes that they accord with objective determinations. The strong challenge pictured Hegel rather unconvincingly as a strong communitarian who believed agents are identical with (rather than identified with) their roles. The weaker challenge is more persuasive, Hegel appears committed to conservatism which means subjective freedom may be compromised by social pressure because the social nature of reason-giving means the conventional is always by default more persuasive than personal conviction.

The first point to make is simply to admit Hegel is a conservative, that much is clear both from his continued critique of the use of abstract right in political theorizing and in his tinkering with—rather than overhaul of—the Prussian state. However, conservatism may be compatible with central liberal values and does not necessarily commit Hegel to quietism in the face of one’s duties in the state. Furthermore, the reasons for his conservatism, especially in the aftermath of the French Revolution, are perhaps justified.

In order to resist the accusation that Hegel’s form of rational legitimation is nothing but yes-saying to authority, it would be worthwhile to return to the example of the mother who finds herself unable to fulfil her role without stealing and violating the system of private property. Let us assume that Hegel would see this as an instance of the ‘better will’ in an ‘unfaithful world’ (PR § 138 R). On an idealized liberal model, the standards of positive right would be legitimated by an appeal to external values or natural rights. So, the right to life would trump political obligation since civil obedience rests on a duty to comply with political dictates *as long as* they protect and secure external rights and values. If they no longer do so, then the citizen’s obligation is null and void. However, for Hegel, there are no external standards of right independent of the social and historical development of ethical life.³⁴ It seems the weaker challenge has some bite: protest when contrary to customary morality is mere wilfulness.

The example of the impoverished mother, though, undermines such an idle reading. The proper understanding of Hegel’s theory of action demonstrates that the role of objective freedom and its earlier, abstract cousin—the right of objectivity—is to enable personal self-determination and not to thwart it. Liberation from immediate needs, independence from irrational authorities, the possibility to be self-willed and certain recognition by others are all requirements of self-determination and if they do not ob-

34. Rose, *Hegel’s Philosophy of Right*, pp. 16–29.

tain, then the subject is not free. The mother is recognized as in the right when she steals because the life of her child ought to be secured and maintained by the objective structures, arrangements and practices of her social existence. Otherwise the world is unfaithful to her better will. The state, for the mother, is irrational because she cannot satisfy her roles as both mother and citizen as she would freely choose to do. She has the subjective right—the highest right—to demand that the state make possible rational self-determination. And protest need not be limited to cases of disharmony between the spheres of ethical life. Historical examples of the need to reject the objective features of a state would include slavery and apartheid since fulfilling one's civil role inhibits one's personal freedom.³⁵ Such institutions make it impossible for certain agents to fulfil themselves as human beings since other agents cannot recognize what they truly are: they remain identical with their role and, hence, not free.

5 CONCLUSION

For man to be free—that is, to be *at home* with himself—the content of his will must be *his own*. For the existing social world to be actualized, then the underlying rationality of its dictates and obligations has to be known and endorsed by the thinking subject, but such an endorsement cannot be mere yes-saying. Freedom is formal when I am able to satisfy my desires (personal freedom), but it is substantial when I satisfy desires which are my good. Yet, this does not rule out coercion for my benefit (the child). The will is free when it is substantial, able to be satisfied and *moral*. Without moral freedom, the will of man is no better than the slave or the child or as Hegel tells us, the 'ethical [*sittliche*] will'; that is the ethical will which is not actual because the agent is unaware of its rationality (Ancient Greece) (PR § 26). The purely subjective will is arbitrary, whereas the purely objective will depends on 'luck' to have ethical content.

The two central concepts of the third section of the *Philosophy of Right*—that is, subjective and objective freedom—originate from the rights of knowledge, intention and objectivity of action which characterize the abstract moral will. Objective freedom is necessary for and supplements—which, is to say, ethical life *actualizes*—personal and moral freedom. Without the categories of ethical life, it would be impossible to form judgements concerning the intentions of others. Thus, ethical life is the substantial form of the right of objectivity of an action. Reciprocally, subjective freedom interrogates and justifies objective freedom. If the subject cannot, or is obstructed from, satisfying his rational desires, then he is not free and responsible. He, then, has a legitimate claim

35. Critically, Hegel's own descriptions of the role of women in the family, the rigidity of social class and the postulation of a hereditary monarch possibly contradict the requirements of equality and careers open to talents which he espouses as necessary for the state to be rational. These, of course, are open to interpretation and I only throw them somewhat glibly in here to demonstrate that, though Hegel's conservatism does not rule out social criticism stemming from the moral conscience, he is often—I believe—guilty of lazy conservatism in describing elements of institutions which are not rational on his own account. Such a discussion is, however, beyond the scope of this paper, but these do illustrate possible areas in which the moral conscience has a proper claim against the duties of the state.

against the state arising from his own moral conscience. So long as the claim is unresolved, freedom is unobtainable and the institutions of ethical life are no longer rational. It is this right of knowledge which constitutes the role of the moral will in *Sittlichkeit*. Morality remains an essential element of modern *Sittlichkeit* since, to actualize the rationality of existing social structures, this rationality has to be self-consciously known. Otherwise we are merely 'lucky' citizens like the Ancient Greeks and children with good and rational parents.

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Ethical Life and the Demands of Conscience

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My aim in this paper is to investigate Hegel's claim that ethical life (*Sittlichkeit*) does not simply negate but rather incorporates, or preserves, crucial elements of the Enlightenment conception of moral subjectivity that Hegel associates with the standpoint of Morality (*Moralität*). More specifically, the part of Hegel's view I want to examine here is his claim that individual moral conscience (*Gewissen*) has its place within the rational social order as depicted in Part III of *The Philosophy of Right*, "Ethical Life". There is a widespread perception among Hegel's liberal critics that his vision of the rational social order allows no place for the genuine expression of moral conscience. This is the view expressed, for example, in Ernst Tugendhat's recent charge that Hegel's view excludes the possibility of "adopting a rational perspective" on a society's prevailing norms and practices¹: "Hegel does not allow for the possibility of a responsible, critical relation to the ... state. Instead he tells us that existing laws have an absolute authority. The independent conscience of the individual must disappear, and trust takes the place of reflection. This is what Hegel means by the *Aufhebung* of morality into ethical life"².

Tugendhat's charges do, in fact, appear to find support in some of Hegel's statements. Hegel does say, for example, that "in *Sittlichkeit* ... the independent conscience of the individual ... [has] disappeared" (§152).³ He also asserts that trust, not reflection, is "the true, ethical disposition" (E §§514-15).⁴ At the same time, though, Hegel's texts abound with passages that appear to support precisely the opposite view, namely, that ethical life preserves — indeed, gives full expression to — the rights of conscience upheld by Morality. He says, for example, that "conscience is ... something holy and its violation a sacrilege" (§137A). More significantly, he repeatedly affirms that modern *Sittlichkeit* accommodates the right of individuals to be bound only by those laws and norms that survive the scrutiny of their own moral reasoning. At one point Hegel identifies "the subject's highest right" — a right that is to be preserved within *Sittlichkeit* — as "the right to recognize nothing that I do not apprehend as rational" (§132).

These apparently contradictory remarks about the role of moral conscience in ethical life should make us wonder just what this phenomenon called "conscience" really is and how Hegel intends to incorporate it into his vision of the rational social order. This is simply to ask how the institutions endorsed by his social theory are supposed to accommodate the important fact that its members are moral subjects, capable of discerning for themselves what the good requires of them. In other words: precisely what rights and freedoms of *conscience* does a Hegelian social order provide for? My discussion of these questions will proceed in three stages. I begin by providing a more detailed account of what Hegel means by "moral conscience" and how he understands the "rights" that accrue to individuals as beings of conscience. Next, I examine the ways Hegel thinks ethical life accommodates the rights of conscience. Finally, I return to one of the objections commonly raised to Hegel's view and attempt to determine what validity, if any, it has.

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Moral conscience and its rights

Central to Hegel's conception of moral subjectivity is the idea that the source of moral authority is ultimately (and in a sense that needs to be further specified) *internal* to individuals rather than external to them. Moral subjects are free, or self-determined, in the very general sense that the moral principles they are obligated to follow come from themselves — from their own wills — rather than from a foreign source. The ideal implicit in this conception of moral subjectivity is realized when individuals are bound only by ethical standards that are, in some significant sense, "their own". It is this ideal Hegel expresses when he writes that "ethical ... determinations ought not to lay claim to human obedience merely as external laws or as the dictates of an authority. Instead, they ought to find assent, recognition — even justification — within one's own heart, disposition, conscience, and insight" (E §503A). The relevance of this ideal to social philosophy is formulated in what Hegel describes as the highest right of moral subjects (§132), namely, that all laws binding the human will, including the prevailing laws and norms of social life, be recognized as good and affirmed as such by the individuals whose actions they govern.

It is often assumed that this ideal requires only what might be called the "inner affirmation" of the ethical dictates individuals are bound to follow. Thus, it might be thought that the only condition the social order must satisfy in accommodating the moral subjectivity of its members is that they *subjectively identify* with their social institutions in a sense that recalls how the citizens of ancient Greece (on Hegel's understanding of it) related to their social order. Individuals who have this relation to their social order *identify* with their institutions in two distinct senses: first, they "identify" with the collective good of their social groups, regarding it as an integral part of their own good and hence as an end they freely embrace; second, they express and solidify their own identities as particular individuals by participating in social life — by carrying out their particular social roles — and by working to achieve the collective good. The thought here is that in subjectively identifying with their social institutions individuals are, at least implicitly, acknowledging those institutions as good. And so, in following the laws and norms that govern social life, they are bound only by ethical standards that they themselves affirm.

My project in this paper is predicated on the idea that subjectively identifying with one's social institutions in this way does not by itself satisfy the requirements of moral subjectivity as Hegel understands them. This claim is reflected in the quotation cited earlier, where Hegel refers not only to the "assent" of social members but also to their "conscience" and "insight". The most important element of moral subjectivity that Hegel finds lacking in the subjective identification characteristic of classical Greece is indicated in his remark that — with the exception of Socrates — the "Greeks had *no conscience*" (§147N).⁵

We can best understand what Hegel takes moral conscience to be by retracing his account of its historical development, beginning with one of his statements of Socrates' contribution to the history of moral subjectivity:

It was in the time of Socrates that a moral standpoint first arose. The Athenians accused him of the crime of no longer following the laws of the fatherland and believing in his country's gods — of no longer being so immediately ethical

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(*sittlich*). Socrates established the standpoint of inner reflection, of thinking over [for oneself] whether something is true. [His principle was] that the concept of good and evil, ... is not immediately binding (*gültig*) in itself but ... must first make its way through the interior of the human being (VPR4, 301).

The two hallmarks of the subjective attitude introduced by Socrates are said to be the absence of immediacy — to be “immediately ethical” is to accept the ethical practices of one’s society unreflectively — and the aspiration to think through social mores for oneself before accepting them as valid. Hegel’s point, then, is that subjectively identifying with one’s institutions as the Greeks did falls short of the ideal of moral subjectivity because it is compatible with the very “immediacy” between individuals and social practices that Socrates’ questioning of Athenian norms sought to dissolve. (As an example of this immediacy, recall Antigone’s statement asserting the inscrutable nature of ethical laws: “They are not of yesterday or today but eternal, and where they came from no one knows” (PhG, ¶437).)

The idea of moral conscience originated by Socrates finds further elaboration in the religious doctrines of Christianity, which Hegel takes to be most consistently articulated in Protestant theology. Part of the significance of the Lutheran Reformation is expressed in the following excerpt from Hegel’s lectures on the philosophy of history:

Because the individual knows that he is filled with the divine spirit, all relations of externality fall away. There is no longer a distinction between priests and laymen; there is no class exclusively in possession of the truth ... Instead, it is the heart, the emotional spirituality of the human being, that is able to come into possession of the truth, and this subjectivity belongs to *all human beings* (PH, 416; XII, 495-6).

Two advances over the Socratic ideal of moral subjectivity are worth noting here. First, Luther, along with Christian theology more generally, grounds the moral authority of humans in their relation to an “absolute,” or unconditioned, being. It is only because humans can be “filled with the divine spirit” that they have access to moral truths and are able to render true judgments about the goodness of human norms and practices. On this view, the Socratic “standpoint of inner reflection” — the ability to discern for oneself the validity of ethical standards — requires access to a point of view that can furnish standards of the good that are unconditionally valid. While the inconclusive character of many Socratic dialogues might be interpreted as casting doubt on the existence of ethical standards that can survive the scrutiny of reason, Luther clearly holds that such standards exist and that human beings, by standing in the right relation to the divine, have access to them.

The second advance over Socrates’ idea of moral subjectivity is expressed in Luther’s pronouncement that the source of moral authority resides within every individual regardless of birth or earthly position. Thus, the link between the human and the divine is envisioned not as a relation between God and some select human individuals, nor between God and the human community as a whole. Rather, each individual has, at least potentially, a direct connection to the

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absolute and hence unmediated access to the true criterion of the good. In other words, each individual is a discrete, self-sufficient locus of moral authority.

It is in the Enlightenment — most notably, in Kant's moral philosophy — that the idea of moral conscience is most completely articulated. The Enlightenment conception of conscience is, in part, a synthesis of the Socratic and Lutheran views. Luther's emphasis on "emotional spirituality" as the basis of humankind's connection to the divine gives way to the older Socratic idea that moral subjectivity depends not on feeling but on rational reflection, and to the related claim that such norms are morally binding only if they can withstand the scrutiny of reason. But the Enlightenment's idea of what this reason consists in appropriates, in secularized form, three central ideas of Luther, namely: that there exists an ultimately authoritative truth in ethical matters; that such truth is in principle available to all individuals; and that attaining such truth requires adopting an "unconditioned" standpoint that abstracts from all merely particular points of view.

To all of this the Enlightenment adds a single, supremely important innovation of its own:

Luther won spiritual freedom [for humankind] ... [by] establishing that the human being's eternal destiny must be wrought out within himself. But the *content* of what is to be wrought out within him ... Luther assumed to be something given, something that is revealed by religion. [In the Enlightenment] the principle was established that this content must be present to me, something I can inwardly convince myself of, and that everything must be referred back to this internal ground (PH, 441-2; XII, 523).

The significance of this Enlightenment tenet lies in the thought that the source of unconditional ethical standards resides, not in an external deity, but within human reason itself. It is not just, as Luther asserted, that all individuals have *access* to the truth in ethical matters, but the very source of that truth — the *ground* of our ethical standards — is also present within each of us. The aspiration Hegel is ascribing to the Enlightenment here is that the *content* of ethical standards not derive from something external to the beings who are subject to them. In the paragraphs that follow Hegel makes clear that what is required in order to satisfy this aspiration is not fully captured by the mere demand — implicit already in the Socratic view — that subjects be bound only by ethical standards they can recognize as authorized by reason. Formulating the ideal of moral subjectivity in this way leaves open the possibility that reason could be conceived of as something extrahuman — as, for example, in Plato's equation of reason with the principles that underlie the cosmic order — with the consequence that the content of moral duty would remain merely given to, or imposed upon, the human being from without. For the Enlightenment, the ethical standards the moral subject is to recognize as rational must have an "internal ground," one that (in a sense yet to be explained) comes from oneself.

But how, more concretely, are we to understand the idea that the content of ethical norms derives from something internal to the human being? It is helpful to recall here that Hegel finds the paradigmatic formulation of this position in the Kantian principle of autonomy, which locates the source of duty in an "internal ground," namely, the will's self-legislative capacity. According

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to Hegel, this account of moral obligation has the important consequence that “right and ethics, which earlier were merely imposed externally upon the human being in the form of a divine command, are now regarded as grounded in the ... human will” (PH, 440; XII, 522). The concept Hegel places at the foundation of his own moral and social philosophy — “the free will that wills the free will” (§27) — is supposed to be an alternative way of expressing the core Kantian idea of autonomy and the concomitant claim that the content of ethical standards derives from principles internal to the human will. Hegel’s version of this Kantian strategy involves establishing the rational character of social institutions by showing them to be necessary for the realization of practical freedom (to be necessary conditions of the will’s achieving complete self-determination). Such a strategy makes the source of ethical standards internal to the human being because freedom is the essential character of humanity.⁶ Thus, the Enlightenment aspiration to find the content of ethical norms within the human being appears in Hegel’s thought as the view that in order to be genuinely binding upon human beings ethical norms must be recognizable by them, not merely as conforming to some possibly external standard of reason, but as promoting a distinctively *human* end — indeed, the highest of all such ends, self-determination.

Hegel’s understanding of the legacy of the historical development we have just retraced is summarized in his statement of “the [moral] subject’s highest right”:

Conscience expresses the absolute authority of ... self-consciousness, namely, to know what right and duty are both *within oneself* (*in sich*) and *as proceeding from oneself* (*aus sich*), and to recognize nothing other than what it thus knows as the good; it also includes the claim that what it ... knows and wills is in *truth* right and duty (§137A).

On Hegel’s view, then, four conditions must obtain if the rights of conscience are to be fully realized:

- i) individuals are bound only by laws and norms they themselves *consciously endorse* as good;
- ii) their endorsement of the ethical standards that bind them is *mediated by their own rational reflection*, which involves distancing themselves from prevailing laws and norms and evaluating them from a universal perspective;
- iii) the ethical standards individuals come to endorse constitute *a true representation of the good*;
- and iv) the goodness of those standards derives from the fact that they promote a *value internal to the human will*, namely self-determination.

Any doubt as to the centrality of rational reflection for this account of conscience is dispelled by noting that Hegel refers to these conditions as the “right of insight into the good” (§132A), where insight is unambiguously characterized as conviction grounded in reasons. This view is stated with perfect clarity in Hegel’s 1825 lectures on the *Philosophy of Right*, where he asserts that the subjective relation a being of conscience ought to have to ethical standards is “not merely a general acquaintance with the good”, rather, “I ought to have *insight* into the good, and insight is something more than mere acquaintance... . With reflection arises the demand that ... I

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have insight into what is declared to be right and good, that I be convinced of its rightness and goodness [on the basis of *good* reasons]" (VPR4, 351-2).⁷

The place of conscience within ethical life

As readers of Hegel are well aware, this account of conscience and its rights is set out in Part II of the *Philosophy of Right* ("Morality"), before Hegel turns his attention to *Sittlichkeit* and the question of how social institutions are implicated in the realization of freedom. The textual location of this discussion raises an important question: Of what relevance is Hegel's view of *moral* subjectivity to his account of ethical life? This question is a particular version of a general interpretive problem that arises everywhere in Hegel's thought, namely: What status do earlier parts of the system have once they have been dialectically "superseded" (*aufgehoben*) by later ones? Applied to the case at hand: To what extent are the rights of conscience preserved and not simply negated within ethical life?

Let us begin with the issue of reflection and the charge that the attitude of trust Hegel imputes to social members is incompatible with adopting a nonparochial perspective from which one could ask whether the norms and practices of one's social order are rationally justified. The first thing to observe is that many passages in Hegel's texts straightforwardly contradict this charge, explicitly affirming that rational reflection on the goodness of one's social institutions is to be preserved as a part of modern *Sittlichkeit*.⁸ Consider, for example, the following passage:

The good has many forms. It can be characterized, for example, as that which is allowed by law. I can know what is lawful, and my knowledge of it is merely the general cognizance that it is to be obeyed (*daß es gilt*). A further kind of knowledge, however, is knowledge on the basis of reasons. In this case knowledge is called conviction. Higher yet is knowledge ... based on the Concept [i.e., full philosophical understanding]. *As a consequence of my moral right, I can demand that a thing be valid for me not merely as something required by law or as based on specific reasons; rather it ought to be shown to be rational in accord with the Concept* (VPR2, 106; emphasis added).

If there is plenty of textual evidence documenting Hegel's intention to preserve rational reflection within ethical life, it may be instructive to ask why so many of his interpreters have insisted on the opposite view. There are, I think, two reasons. First, it is easy to gain the impression that moral conscience is irremediably at odds with the subjective disposition Hegel ascribes to the members of *Sittlichkeit*. This is because the latter requires that individuals subjectively identify with their social institutions, while the former makes the apparently opposite demand that individuals' attachments to their social roles be sufficiently loose to allow them to reflect on their social order from a detached, universal perspective. But this line of thought rests on a widespread misunderstanding of the sense in which Hegel claims that individuals' membership in social institutions is constitutive of their identities. It is not Hegel's intention to claim, as contemporary communitarians sometimes do, that the social roles individuals occupy

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exhaust their identities such that they are nothing more than bearers of the particular roles they occupy. Instead, the view that individuals subjectively identify with the institutions of *Sittlichkeit* comprises two more modest claims: first, that social roles furnish individuals with what they take to be their most important ends and projects, those that constitute their life-defining activity; and, second, that a substantial part of social members' "sense of self" — their sense of themselves as individuals of "worth and dignity" (§152) — derives from the social recognition they receive from fulfilling their roles in ethical life. When 'identity' is understood in this limited sense, there is nothing in Hegel's account of social membership that precludes the ability to distance oneself from one's social roles in order to ask whether those roles, and the social order one inhabits, are rationally defensible.

A second reason *Sittlichkeit* is frequently thought to allow no space for rational reflection is that Hegel sometimes seems to say precisely that. We have already mentioned his claim that in *Sittlichkeit* conscience disappears (§152) and trust takes the place of reflection (E §§514-5). A further passage critics often point to is Hegel's statement that members of *Sittlichkeit* do their duty "without ... reflection" (E§514). A careful reading of this passage, however, shows that it does not contradict the view that *Sittlichkeit* accommodates the right of moral subjects to validate the ethical standards they embrace through reasoned reflection. What Hegel actually claims here is that members of *Sittlichkeit* "fulfil their duty *without the reflection of free choice*. They regard their duty as something that is their own and that has a stable being, and in this necessity they win themselves and their actual freedom". Thus, what Hegel excludes from ethical life is not reflection *simpliciter* but what he calls "the reflection of free choice". In neighbouring passages Hegel characterizes free choice (*Willkür*) as the capacity "to *choose* among inclinations," and he connects it to a kind of reflection as follows: "The will ... distinguishes itself from its drives and sets itself over and above their manifold content as the simple subjectivity of thought; in this way it is a *reflecting* will". Thus, the reflection involved in the exercise of *Willkür* is dependent on the will's ability to distance itself in thought from given inclinations — to stand above them, as it were — and to choose which of them to take up as "its own" as the basis for action. Thus, in saying that members of *Sittlichkeit* do their duty "without the reflection of free choice" Hegel means to be making a point about how they typically experience their own ethical action. The point is simply that when social members do what their roles as parents, professionals, and citizens require of them, they do not normally adopt a reflective attitude of the sort associated with free choice. That is, they do not normally "stand above" the contents of their will and regard their duty as something they might choose to do but might equally well choose not to. Instead, for a member of *Sittlichkeit* doing one's duty is so intimately bound up with one's sense of who one is — with one's fundamental identity — that doing so appears more like a necessity (a necessity, given who I take myself to be) than an arbitrary choice. Nothing in this account of the everyday practical attitude of social members precludes their being able at times to step out of this unreflective frame of mind in order to pose the question definitive of moral subjectivity, namely, whether their social institutions are in truth worthy of their allegiance. While Hegel clearly thinks that stepping back from one's inclinations and choosing to do one's duty are not part of the everyday disposition of social members — imagine parents who regarded feeding their

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children as on a par with deciding which movie to see after dinner — he is most emphatically not a champion of a mindless compliance with social norms that never pauses to reflect on the social order and one's place within it from the perspective of a moral subject.

Still, even if it is granted that ethical life accommodates moral reflection, the worries of Hegel's liberal critics are far from answered. It is still possible to wonder whether Hegel's view allows for, or attaches any importance to, the freedom to *criticize* one's social order when reflection shows it to fall short of one's moral standards. As Tugendhat formulates this worry, *Sittlichkeit* has no room to acknowledge "the freedom to ... take a position *in opposition* to existing norms".⁹ This is an important question that any discussion of the rights of conscience will need to take up, and liberals especially will want to know whether Hegel can answer it satisfactorily. The reason for postponing this question just now is that, although Hegel addresses it, he does not regard it as the most important issue his account of moral conscience raises for social theory. In order to do justice to the differences between Hegel and thinkers who fit more squarely within the liberal tradition, I shall first examine what Hegel himself takes to be the most important ways the rational social order accommodates the rights of conscience and only then turn to the questions liberal theorists typically regard as primary.

Understanding how *Sittlichkeit* accommodates the rights of conscience depends on recalling the four aspirations Hegel ascribes to moral subjects:

- i) individuals are bound only by laws and norms they themselves endorse;
- ii) their endorsement of those laws and norms is grounded in rational reflection;
- iii) the ethical standards they endorse truly represent the good; and
- iv) the goodness of those standards derives from the fact that they promote a value internal to the human will (self-determination).

The question I raised a moment ago focuses on the first of these conditions and asks what ought to be the case when it fails to be met, that is, when certain individuals do not endorse the laws and norms their society expects them to obey. Hegel's primary concern, in contrast, is not how to deal with such discord when it arises but rather what a complete realization of moral subjectivity would look like and how the social order must be constituted in order to make the realization of that ideal more likely. Hegel's central question, then, is whether a social order in which all of these aspirations of moral subjectivity were widely and nonaccidentally fulfilled is a coherent and realizable ideal and, if so, under what conditions. Rather than focusing from the start on how to respond when one of the four conditions is unmet, Hegel's first concern is to ask whether the demands they represent are systematically compatible — whether (and how) it is possible for them to be realized within a single human society.¹⁰

Hegel thinks that the greatest potential for conflict lies in a tension between the first and third of the aspirations of conscience, namely, that one be bound only by laws and norms one endorses oneself and that one have access to the truth in ethical matters. This tension is what is at issue in the distinction Hegel draws between "true conscience" and "formal conscience" (§137+A). True conscience is the form of moral subjectivity that reconciles these two aspirations — it regards only its own ethical standards as authoritative, and those standards are also objectively good. Formal conscience, in contrast, is moral subjectivity insofar as it determines for

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itself what is good without regard to the content, and hence to the truth or falsity, of the standards endorsed. Hegel's point is that the merely formal conscience does not completely realize the ideal of moral subjectivity, since subjects of conscience aspire not only to determine for themselves what is good but also to be right about the ethical standards they endorse. By extension, a society where individuals regarded prevailing laws and norms as good, but were mistaken in doing so, would not satisfy the demands of moral subjectivity. Those demands are met only when the laws and norms of existing social institutions are both good and recognized as such by its members.

Thus, the first condition a social order must meet if it is to accommodate the rights of conscience is that it in fact *be* good (and hence affirmable by true conscience). For Hegel, then, the single most important respect in which *Sittlichkeit* accommodates moral subjectivity is that its institutions are capable of withstanding the rational scrutiny of its members. This feature of the rational social order could be called its *reflective acceptability*.¹¹ For Hegel, a social order meets the requirements of reflective acceptability when it realizes freedom in its various guises: personal, moral, and ethical (*sittlich*) freedom.

The second condition the rights of conscience impose on the rational social order follows from the requirement that social members be bound only by laws and norms they themselves endorse: if compliance with prevailing laws and norms is to be consistent with the ideal of determining one's actions in accord with one's own understanding of the good, then social institutions must not only *be* rational, they must also be widely apprehended as such by their members. A second requirement of the rational social order, then, is that its rational character be apparent to its members.¹²

A common liberal objection

It is time now to revisit the question whether Hegel's view can recognize the right of social members to criticize their social order. In fact, there are two sets of questions here. The first concerns whether Hegel's theory possesses the *philosophical* resources that would make some form of rational social criticism possible: Does Hegel's judgment that the modern social order is good render all criticism of existing reality rationally impossible? And, if not, is the kind of identification with institutions required of social members compatible with their engaging in the forms of criticism his theory allows for? The second set of questions concerns whether Hegel's theory can allow any *political* space for criticism of the social order by its members who remain unreconciled to its basic features. Most importantly, how ought the state to treat individuals who do not recognize as good the norms and institutions that Hegel's theory takes to be fully justified?

The charge that Hegel's position fails to recognize the freedom to criticize the existing social order comes closer to its mark than the other objections considered thus far. There are, for example, no passages in the *Philosophy of Right* that acknowledge the importance of social members having the freedom to engage in public discourse critical of their social institutions.¹³ To this it may be tempting to respond simply that Hegel is not interested in less than ideal cases (where freedom is imperfectly realized) but only in articulating the standards for a fully rational

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social order and in showing that the institutions of the modern world constitute such an order. But even if we grant this description of Hegel's project (which is after all correct), we are still quite far from the conclusion that social criticism can have no place in his theory. In fact, the contrary is the case, and the truth of this is revealed by an obvious but frequently overlooked feature of Hegel's theory, namely, the simple fact that the social order the *Philosophy of Right* lauds as "actual" (*wirklich*) nowhere exists in precisely the form in which it is depicted there. Despite his reputation as an apologist for the Prussian state, the institutions Hegel endorses are obviously not identical to those of 19th century Prussia. It is precisely here — in the disparity between real (existing) institutions and those that are actual in Hegel's technical sense — that the possibility for social criticism is to be found. For Hegel's *idealized* account of the modern social order provides us with the resources for seeing where existing institutions do not fully measure up to what they should be and for thinking about how they can be made to conform to their own rational principles.

That the critical potential of Hegel's theory is so often overlooked is due in part to a natural misunderstanding of his claim that the aim of philosophy is to *reconcile* human beings with the actual world. But it is important to recognize that, properly understood, reconciliation is not incompatible with a type of social criticism that is directed at the *reform*, as opposed to the radical overhaul, of existing institutions. Criticism and reform are consistent with Hegel's theory, insofar as they aim at transforming institutions so as to make them conform more faithfully to the rational principles already implicit in them. This is just to say, in Hegelian jargon, that the proper object of our reconciliation is actuality (*Wirklichkeit*), not existing reality (*Realität*). Actuality, as Hegel conceives it, results from comprehending the rational principles that inform existing reality and make manifest its inherent goodness. Applied to the social world, "actuality" refers to a rational reconstruction of existing social reality, one that clarifies and brings into harmony the basic principles underlying the various existing social orders that typify Western modernity. As such, actuality is a purified version of existing reality that is more fully rational than any particular existent social order but that is not for that reason independent of, or out of touch with, the existing world. This is not to saddle Hegel with an airy form of idealism that reduces actuality to "mere ideas" (or even "mere ideals"). Rather, the ideas (and ideals) that characterize the actual social order are already to be found, though in imperfect form, in existing institutions. Thus, the normative standards Hegelian social criticism brings to bear on existing reality are actual, and not "merely ideal," in the sense that they are not externally imposed upon, but already belong to, the object of criticism.¹⁴

This point helps to explain how a certain critical perspective on existing social reality is compatible with the subjective disposition Hegel's theory requires of social members. These two attitudes can easily appear to be in conflict, since finding one's identity in one's social membership requires an affirmation of one's social order that seems to be incompatible with criticizing it. But now we can see that no such conflict exists, since the object of our affirmation as members of *Sittlichkeit* is not institutions as they presently exist but something like "our institutions as they aspire to be, almost are, and in principle could be (if only we worked hard enough to bring them better in line with their own ideals)". There is nothing contradictory in

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thinking that an individual can both take her American citizenship to constitute a substantial part of who she is (in the sense required by Hegel's theory) and to hold that in their present form American political institutions do not completely measure up to their own immanent ideals. What is required for this synthesis is that existing institutions come close enough to realizing their own ideals so as to be recognized either as genuine, albeit imperfect, embodiments of the actual (rational) social order or as on their way to becoming such.¹⁵

It is clear, then, that Hegel's theory has the resources for regarding some forms of social criticism as a legitimate exercise of moral subjectivity. Why then does it appear otherwise? One reason is that Hegel goes to great lengths to express his opposition to the kind of critique for which his theory indeed has no place: *radical* social criticism. Radical critique can take two forms: the first involves a rejection of the basic values that existing institutions embody (or seek to embody), whereas the second accepts those values as worthy ideals but insists that existing institutions are incapable of realizing them and must therefore be replaced by new ones. An example of the first type of radical critique is the claim that the individualism fostered by civil society is itself an unworthy ideal, perhaps because it precludes the formation of genuine bonds to others, or because it distracts human beings from pursuing more important ends. An example of the second type is the charge that the free-market principles of civil society make it impossible for most of its members both to support themselves economically and to engage in meaningful, identity-constituting work.

It is easy to see that adopting a radically critical stance towards existing institutions conflicts with the Hegelian ideal of subjectively identifying with them. This point alone, however, does not establish the undesirability of radical critique, for it is possible to imagine cases where subjective identification with one's social order can take place only by, in effect, relinquishing one's status as a moral subject. If existing institutions are fundamentally bad — if they stand in the way of the realization of freedom — then social members who affirm them put themselves in conflict with the good and hence with their own (true) conscience. In other words, Hegel does not believe that radical social criticism is unwarranted in all circumstances. On the contrary, it is unwarranted only in the modern (Western) world, and this is because its three social institutions are, in basic outline, rational. In circumstances in which this is not the case, refusing to affirm the existing social order is a legitimate expression of moral subjectivity.¹⁶

An obvious question arises here as to the plausibility of Hegel's claim that the modern social order does not merit radical critique. Rather than explore that issue here, I will simply try to clarify some of the implications of his view. What, more precisely, does it mean to say that *Sittlichkeit* allows no room for radical critique? It means, most importantly, that individuals who do not affirm social institutions that are in essence rational, or who inhabit a social order so bad that it cannot be rationally affirmed, fall short of realizing the full range of freedoms available to modern subjects. Since in both situations individuals experience the laws and norms that govern them as imposed from without, both are instances of unfreedom, or of alienation from the social world. No matter what the reason for such alienation, Hegel regards it as a lamentable falling short of the ideal of reconciliation. But apart from this judgment as to the unfree or alienated status of those who engage in radical critique, what does Hegel's theory have to say about how a

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rational social order ought to treat those who fail to affirm its basic institutions? Does it attribute any importance to individuals having the freedom to communicate their dissatisfaction to others, no matter how alienated true theory might show it to be? This question leads us back to the second of the questions raised earlier, namely, how the Hegelian state will treat individuals whose consciences do not allow them to recognize as authoritative the laws and norms Hegel takes to be fully justified.

To this question Hegel's texts offer, at best, conflicting answers. In several passages, all located in "Morality," Hegel appears to assert that the merely formal conscience has no protected status within the rational state.¹⁷ Nowhere does Hegel suggest here that individuals ought to be guaranteed certain rights to disobey, or to express their opposition to, laws that his theory regards as justified but that they, as beings of conscience, cannot endorse.

A more nuanced picture emerges when we turn to those passages in "Ethical Life" where Hegel takes up concrete examples of conscientious dissent by considering the status of religious minorities, such as Jews, Quakers, and Mennonites. The first thing to be noted is that here Hegel explicitly recognizes something very close to the rights of religious conscience as upheld by orthodox liberalism: "the state can have no say in the content [of religious belief], insofar as this content relates to the internal dimension of representational thought" (§270A).¹⁸ Moreover, his support for such rights is explicitly grounded in his understanding of moral subjectivity (more precisely, in a respect for each individual's right to determine for himself what is true in religious matters).¹⁹ Since these passages repeatedly draw attention to the distinction between "internal" belief and "external" action, it can easily appear that the rights of conscience Hegel recognizes pertain to *belief* but not to *actions* required by the laws and norms of ethical life. Yet Hegel's statements clearly grant these minorities a degree of freedom not to comply with political duties that conflict with their religious beliefs:

A state that is strong because its organization is fully developed can adopt a more liberal attitude ... and can completely overlook particular matters that might affect it, or even tolerate communities whose religion does not recognize their direct duties to the state (although this of course depends on the numbers concerned). The state does this by entrusting the members of such communities to civil society and its laws, and is satisfied if they fulfil their duties to the state passively, for example by substitution [of an alternate service] (§270A).

In saying that a well-constituted state ought to *tolerate* dissenting communities, Hegel stops short of claiming that conscientious objectors have a *right* to be exempted from the duties of citizenship.²⁰ But what his view comes down to (or ought to, given his basic principles) is the claim that such dissenters have no *unconditional* right to be exempted from the duties the state normally imposes on its members. As the passage just cited indicates, there are certain circumstances — for example, when dissenters become too numerous — where no such exemption can rightfully be granted. This view must not be confused with one that advocates the toleration of dissenting minorities on merely prudential grounds (because doing otherwise might be too costly, or give rise to social unrest). Hegel's view, in contrast, (or at any rate the view that

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follows from his own principles) endorses toleration on moral grounds but denies that those grounds imply an unconditional right to follow one's conscience in defiance of the state.²¹ Hegel's social philosophy is constructed around the idea that freedom has a variety of forms; (one of these is moral self-determination (determining one's actions in accord with one's own understanding of the good), another consists in subjectively identifying with one's social roles and institutions). For Hegel this implies that some degree of value (and hence respect) must be accorded to the exercise of conscience regardless of whether the ethical standards one takes as authoritative are objectively valid. An individual who determines to act in accord with standards of the good that are false but nevertheless "his own" clearly fails to achieve the highest level of moral self-determination. Yet Hegel is committed to holding that such an individual achieves a degree of self-determination that, however incomplete, merits the respect of others and of the state in whatever ways are consistent with the systematic realization of freedom.²² The consistent Hegelian position on this issue, then, unites three claims: (i) conscientious dissenters ought to be accorded a right to public criticism of the social order and to noncompliance with laws that violate their understanding of the good; (ii) this right is grounded in their dignity as moral subjects rather than in prudential considerations; and (iii) this right can be overridden only when the state's very existence, or some other compelling interest in freedom, is at stake.²³

In response to the objection that *Sittlichkeit* allows no room for moral subjects to engage in conscientious criticism of the existing social order I have argued for two main points: first, that the sense in which Hegel's theory requires individuals to find their identities in their social roles is compatible with adopting a substantive, though limited, critical stance with respect to the social world, namely, one that envisages the reform, though not the radical overhaul, of existing institutions; second, that the reason Hegel regards radical critique as undesirable is not that his theory places too low a value on moral subjectivity — requiring it to give way in any circumstance to whatever demands the state might make — but because he is convinced that a radical critique of modern social institutions would be *mistaken* and hence would entail the subjective alienation of individuals from a social order that was in fact essentially good.

The conclusion I mean to come to is that on this issue — at least at the level of basic principles — the differences between Hegel and orthodox liberals are less substantive than they seem, more a matter of degree and emphasis than deep disagreement.

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- 1 Ernst Tugendhat, *Self-Consciousness and Self-Determination* (Cambridge, Massachusetts: MIT Press, 1986), 311.
- 2 Tugendhat, 315-16, translation amended. Tugendhat also makes the more radical (and more obviously false) charge that "Hegel's philosophy is consciously and explicitly the ... justification of the existing order, regardless of how this existing order may be constituted" (317).
- 3 Numbers preceded by "§" without further bibliographic information refer to paragraphs of *Grundlinien der Philosophie des Rechts*, vol. 7 of *Hegel's Werke* (Frankfurt am Main: Suhrkamp, 1986), available in English as *Elements of the Philosophy of Right*, ed. Allen

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- W. Wood, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1991). (Hegel's remarks (*Anmerkungen*) are indicated by "A," his additions (*Zusätze*) by "Z," his handwritten marginal notes by "N". "§151+Z" refers to both paragraph 151 and its addition.) Other works of Hegel are cited as follows: E = Part III of the *Enzyklopädie der philosophischen Wissenschaften*, *Werke*, vol. 10; (in English: *Hegel's Philosophy of Mind*, trans. William Wallace (Oxford: Oxford University Press, 1971)); PH = *Vorlesungen über die Philosophie der Geschichte*, *Werke*, vol. 12; (in English: *The Philosophy of History*, trans. J. Sibree (New York: Dover, 1956), cited by English (and German) page numbers); PhG = *Phenomenology of Spirit*, trans. A. V. Miller (Oxford: Oxford University Press, 1977); VPR2 = *Philosophie des Rechts: Die Vorlesung von 1819/20 in einer Nachschrift*, ed. Dieter Henrich (Frankfurt am Main: Suhrkamp, 1983); VPR4 = *Vorlesungen über Rechtsphilosophie*, vol. 4, ed. Karl-Heinz Ilting (Stuttgart: Frommann-Holzboog, 1973). In all cases I have supplied my own English translation.
- 4 Tugendhat cites E §§514-15 in support of his claim that the reflection appropriate to moral subjectivity is excluded from *Sittlichkeit* (315). I discuss this passage in more detail below, but for now it is sufficient to note that although Hegel does identify trust here as "the true ethical disposition," the reflection it is said to replace is qualified as "the reflection of free choice" (*die wählende Reflexion*). Since Hegel consistently characterizes choice (*Wahl*) as an incompletely rational form of willing (§14, E §§476-7) — equivalent, roughly, to selecting among a set of given options in accord with one's subjective preferences — the claim that the reflection of free choice is absent from *Sittlichkeit* cannot be taken to imply that the latter excludes all reflection, including that associated with moral subjectivity.
 - 5 "It can be said of the Greeks in the first and true form of their freedom that they had no conscience; for them [ethical life consisted] predominantly [in] the habit of living for the fatherland without further reflection" (PH, 253; XII, 309).
 - 6 Freedom of the will ... is what makes the human being human; it is for that reason the fundamental principle of spirit" (PH, 443; XII, 524-5).
 - 7 Although "on the basis of *good* reasons" (*aus guten Gründen*) does not appear in the particular passage cited, Hegel uses this locution at §132A.
 - 8 In addition to the passages quoted here see §147A, §268, and VPR2, 123-4, all of which unambiguously confirm that trust is compatible with higher forms of rational insight. Moreover §5 makes clear that reflection — the capacity to abstract from "every given determinate content" of the will, including the prevailing norms of one's society — is an essential element of the will, without which full freedom is unrealized.
 - 9 Tugendhat, 311.
 - 10 Hegel also takes moral subjectivity to be realized in *Sittlichkeit* in the sense that the social order, *taken as a whole*, embodies the features of a moral subject insofar as it is governed by its own general will directed at the universal good: "the state ... *knows* what it wills and knows it in its *universality*, as something *thought*; consequently, it acts and functions in accord with known ends and recognized principles and in accord with laws that are such not only *implicitly* but for consciousness" (§270).
 - 11 The concept of reflective acceptability is introduced and helpfully discussed by Michael Hardimon in "Role Obligations," *The Journal of Philosophy* 91 (July 1994), 348-54. As Hardimon points out, a social role (or institution) can be reflectively acceptable even though it may not actually have been reflected upon.
 - 12 This condition translates into a number of concrete requirements, including the political demand that the legislative process — the process through which the general will is

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constituted — be fully transparent to all citizens; also, the requirement that individuals have a basic understanding of how their social order works, the purposes of its three institutions, and how they fit together to constitute a complete and coherent whole.

- 13 One place we would expect to find such an acknowledgment is the discussion of the press's role within political society (§319+A). But here Hegel completely ignores the function a free press could serve as a forum for rational, critical debate. Instead he appears to defend freedom of the press (in a moderate form) only because it satisfies the need of individuals "to express even their subjective opinions concerning the universal" (§308A) and because the falsity, distortion, and derision that is likely to result from such freedom can do little damage in a well-constituted state.
- 14 To take an example from American democracy: the practice of "one person one vote" embodies an ideal of political equality that is imperfectly realized as long as political campaigns are financed by the "donations" of a few wealthy individuals or corporations. Thus, criticism of the existing order is possible in the name of ideals that already govern existing practices.
- 15 I would argue that a similar conception of reconciliation is at work in, and one of the central aims of, Rawls's political theory in *A Theory of Justice* (Cambridge, Massachusetts: Harvard University Press, 1971). Though the Hegelian roots of that theory are seldom explicitly acknowledged, something like Hegel's position is implicit in the method of reflective equilibrium. For that method aims to bring to explicit consciousness the obscurely recognized principles of justice that inform contemporary practice, and doing so is intended to reinforce our commitment to (and affirmation of) them, even as we recognize that they are only imperfectly realized in the world we inhabit. Expressed in Hegelian language, the intended effect of Rawls's philosophy is both affirmation of "actual" political institutions and a recognition of how existing institutions can be brought closer to actuality.
- 16 Even in these circumstances Hegel's preferred response is withdrawal from the social world rather than critique or social activism (§138Z). This is no doubt due to his belief that fundamental historical progress is never the direct result of human planning but takes place behind the backs of human participants, via the ruse of reason.
- 17 For example: "... the state cannot recognize conscience in its distinctive form (i.e., as *subjective knowledge*) any more than subjective *opinion* ... has validity within science" (§137A). "On the one hand, conscience is a holy place; on the other hand, it is not to be respected. It depends on whether its content is true, whether it contains the principles of objective duty" (VPR4, 362). "In general nothing is to be ceded (*ist darauf nichts zu geben*) when someone says in response to demands made of him by the state that it is against his conscience to fulfil them" (VPR2, 107).
- 18 See also Hegel's statement later in the same passage that "as far as doctrinal instruction is concerned, ... the state should not only grant the Church complete freedom in such matters, but should also treat its doctrinal teachings with unconditioned respect, regardless of what they may contain, on the grounds that the Church alone is responsible for determining them" (§270A).
- 19 "[Religious] *doctrine* itself has its province within conscience and enjoys the right of the subjective freedom of self-consciousness — the sphere of inwardness, which as such lies outside the province of the state" (§270A).
- 20 The concept of toleration comes up again in a similar passage at VPR2, 107: "The Quakers do not take oaths because it is against their conviction; for the same reason they do not bear arms or remove their hats in front of others The state — the objective,

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right action — has complete priority here; it cannot be asked what my particularity says against it. So, for example, it is always a matter of toleration when the state endures Quakers At the same time, a state can be internally strong to the extent that it tolerates abnormalities of this kind within it. In general nothing is to be ceded when someone says in response to demands made of him by the state that it is against his conscience to fulfil them”.

- 21 In fact, few liberals would claim otherwise. Certainly not Rawls, who writes: “There is a temptation to say that the law must always respect the dictates of conscience, but this cannot be right,” Rawls (1971), 370.
- 22 Ascribing this position to Hegel requires nothing more than applying the same principles that inform his account of the nature and limits of abstract right (the rights of persons) to the case of moral subjectivity. For there, too, a form of freedom is at issue — choosing which of one’s given desires to act upon — that falls short of complete self-determination but is nevertheless important enough to ground a system of rights that a rational social order must respect and enforce. The freedom that defines personhood bears an important similarity to the type of self-determination I am ascribing here to the merely formal conscience in that it, too, is independent of the will’s actual content (the ends the person chooses as his own). In order for the person’s ends to count as self-determined, and hence as *prima facie* worthy of others’ respect, it is enough that those ends be freely chosen. This criterion is formal because it is indifferent to what one chooses; choosing an end suffices to make it “mine”. A further similarity between the two cases is that both generate only conditional rights. The rights of persons, like the rights appropriate to the merely formal conscience, can be overridden in those (rare) circumstances where they conflict with another, more compelling “right,” such as the social order’s continued existence.
- 23 A similar condition is laid down by Rawls (1971), 220, when discussing the rights of intolerant citizens: “[an intolerant sect’s] freedom should be restricted only when the tolerant sincerely and with reason believe that their own security and that of the institutions of liberty are in danger”.

Part IV
Ethical Life:
Family, Civil Society and the State

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**SPIRIT'S PHOENIX
AND HISTORY'S OWL
or THE INCOHERENCE OF DIALECTICS
IN HEGEL'S ACCOUNT OF WOMEN**

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Men correspond to animals, while women correspond to plants because their development is more placid and the principle that underlies it is the rather vague unity of feeling.¹

Womankind—the everlasting irony in the life of the community—changes by intrigue the universal purpose of government into a private end.²

True union or love proper exists only between living beings who are alike in power and thus in one another's eyes living beings from every point of view.³

The purpose of nature is to extinguish itself and to break through its rind of immediate and sensuous being, to consume itself like a Phoenix in order to emerge from this externality rejuvenated as spirit.⁴

Philosophy always comes on the scene too late—as the thought of the world, it appears only when actuality is already there cut-and-dried after its process of formation has been completed. The owl of Minerva spreads its wings only with the falling of the dusk.⁵

There are two parallel and therefore nonconverging strands in Hegel's dialectical method: one fixed, the other moving, one set in stone the other fluid as water, the two eternally at odds with one another.⁶ The

AUTHOR'S NOTE: This essay is dedicated to the memory of George Armstrong Kelly, the distinguished Hegel scholar, a founding member of Political Theory's editorial board, and a dear friend, who died on December 23, 1987. I would also like to thank the Research Council of Rutgers University for the timely funding that enabled me to complete the article.

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moving strand is represented by spirit (*Geist*)—the yeast of human consciousness and human history that, by resisting unity, rebelling against orderliness, and insisting on the productivity of negation, reveals itself as a revolutionary principle of radical action and reaction. Unsurprisingly, spirit is the creation of the young Hegel, still enamored of France's neorevolutionary Napoleonic heritage.⁷

The fixed strand is history itself, not history underway, but history actualized, history cut-and-dry, history seen from above as a wholly completed process whose seeming contradictions and evolving moments are so many elements in a great and still landscape that, with the close of the day, is frozen in eternity. With the birth of spirit the new dawn breaks, and, as a flash of sunlight sets the atmosphere shimmering, consciousness tears itself from the primeval sea of unity to begin its turbulent journey to self-recognition—a journey it makes as a Phoenix, rising reborn from apparent sublations, contradictions, supercessions, and annihilations, to fly again and then again and still again.⁸ With the close of History, however, the dusk falls and the Phoenix vanishes; in the gathering gloom the Owl of Minerva takes flight, a ghostly sightseer surveying a world petrified by completion.⁹

It is Hegel's ambition to demonstrate that what begins at dawn in a beam of brilliant sunlight and progresses through the day as a rich confusion of contradiction and paradox ends at dusk as an orderliness of reason no less fixed and imposing than the preternatural ideas of the Platonic philosophy. This project of reconciliation—a regaining of the Unity of Identity (the One from which all consciousness flows) without surrendering the complexity of actual History (the Many from which the particularity and differentiation of the real world arise)—was to be accomplished via dialectical method. And dialectical method, notwithstanding Hegel's remonstrance to the contrary, was nothing if not edifying.¹⁰ It instructed mightily, it confounded prettily, and it encompassed all while it surrendered nothing.¹¹ In the magnificent aviary that was Hegel's new system of science there was room for both the Phoenix and the Owl. Or so Hegel imagined.

Critics, however, are less sanguine. Many simply deny outright the possibility that two such hungry birds can cohabit. More edified by the parts than persuaded by the whole, these critics find their way around the dialectic that joins dawn and dusk and seize sympathetically on the dynamic image of the sunrise, or excoriate the frozen landscape of Minerva's Owl. Students of the morning, such as Herbert Marcuse or Joachim Ritter, celebrate the rich textures of spirit's ardent negativity—

its yeasty, catalytic restlessness that makes possible a fervent and revolutionary Marxism: "There is no other philosophy," writes Ritter, "which is so much and so deeply in its innermost impulses a philosophy of revolution as that of Hegel,"¹² while students of the lugubrious dusk mimic the disappointment of Kojève and Habermas, rueing the fixity of history's final appearance as reason actualized, denying the dynamic potential of a dialectical method that, as Kojève has written, is "not a method of research of philosophical exposition, but the adequate description of the structure of being," a method that ultimately permits Hegel to "limit himself to describing the given."¹³

Now both Marcuse, who wishes to make the young Hegel into the young Marx, and Kojève, who fears the old Hegel may conceal the young Plato, prefer one or another of the parts to the dialectical whole—preferences that, as we will see, Hegel seems almost to force upon his readers. He presumably aspired to proffer the method of neither a pure revolutionary idealist nor a pure conservative historicist—supposing himself to be developing a genuine dialectician's account of human consciousness as thought *and* history. At the same time, he evidently hoped in the end to draw a portrait in which the world, when its dialectical history was completed, would appear no less rational than the Ideal Forms from which Plato believed our imperfect history actually issued. The genuine dialectical portrait of consciousness and history fails, however, because the moving and fixed strands cannot accommodate one another—because the Phoenix and the Owl cannot fly in the same heaven. It is my object here to try to show why that is so.

I will begin, however, with quite another subject: Hegel's complex and contradictory discussion of the role of women in the evolution of consciousness and its actualization as history. Although my aim will still be to examine the apparent defects of dialectical method, I will make a quite extended detour that will permit me to traverse the territory of gender and sexuality in Hegel. Now, in addition to the fact that this subject is in many ways more interesting than that of the deficiencies of dialectic, the inquiry into gender also turns out to yield a perfect illustration of the defects of dialectic as an attempted portrait of both consciousness and history, an illustration, in other words, of the paradox of Phoenix and Owl that is concrete rather than abstract and substantive rather than merely formal.

Hegel had a great many contradictory things to say about women, and the contradictions were not always of the artfully dialectical kind. He declared in the *Phenomenology* that womankind constituted an

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"everlasting irony in the life of the community,"¹⁴ but it is his own ambivalent position on womankind that is shot through with irony. Women are in one place "plants" whose placidity, whose "vague unity of feeling," is in sharp contrast to man's active "animal" nature,¹⁵ but in another they are keepers of *Sittlichkeit* and the higher ethics that the family makes possible;¹⁶ here they seem undifferentiated creatures of immediate sense experience, radically inferior to males,¹⁷ but there they are beings who, as revealed by love, are fully equal to men, women and men being "alike in power and thus in one another's eyes living beings from every point of view."¹⁸

Critics may be tempted to treat Hegel as a conduit for all of the patriarchal prejudices of his time and his writing on gender as an effort to memorialize conventional male bigotry. Yet he turns out to possess a sophisticated and sometimes even emancipatory vision of women. Next to the metaphors for placidity, abstract universality and sensuous immediacy—all of which suggest a truncated, underdeveloped image of women—can be found a loftier language; this rhetoric does not put women on a pedestal in the fashion of Rousseau, but assimilates them fully to the class of conscious beings.¹⁹ As such, they become capable of reason, of ethical life, of liberty, and of all the other insignia of full human consciousness—the equals of men as beings in whom Spirit works its dialectical way. Hegel in fact offers an intriguingly varied and colorful panoply of female types. These include (a) woman as lover, and its correlate, (b) woman as wife; (c) woman as mother and guardian of the family; (d) woman as sister and faithful priestess of the household Gods of blood and kinship (Antigone's relation to the Penates is the model); and (e) woman as child and, in potentia, generic (gender-free) adult.

Each of these types, which are inferences from Hegel's general discussion of women rather than explicit models posited by him, underscores distinctive attributes of the feminine personality. Some are explicitly feminine in the conventional sense, but others are more complex and suggestive of generic traits that point to a capacity for spirited consciousness and ethical life that belie conventional femininity. To be sure, women, like men, are in their gender distinctions partial beings who constitute a whole only through union, procreation and their consequent relationship to the human genus;²⁰ but to be like men in their incompleteness with respect to the genus is to be the equal of men in a number of vital ways. This becomes clearer when we specify the types that were introduced above in shorthand.

Hegel's most striking views on women emerge from an improbable source: his discussion of love—both in the early *Fragment* and in the *Philosophy of Right* where it is integrated into the discussion of husband-wife relations.²¹ Love is, for Hegel, a definitively egalitarian relation; he not only supposes that “true union or love proper exists only between living beings who are alike in power,”²² but he regards it as a kind of indignation against private property, a “raging” against individuality.²³ In so far as they love one another, “all distinction between the lovers is annulled.”²⁴ The argument outlined in the early *Fragment* is no mere abstraction; nor is the love it celebrates the possession of mere lovers. The mature Hegel positions love at the vital center of the life of the family.²⁵ It is love that draws man and woman to one another and love that binds together the family. Indeed, love has the same leveling effect on husband and wife as it has on abstract lovers: “Marriage results,” Hegel observes, “from the free surrender by both sexes of their personality.”²⁶ The unity made possible by love is in turn the source of the ethical character of marriage, in the face of which its merely physical dimension vanishes, giving way to the spiritual bond that constitutes its core and its permanence.²⁷ Because marriage is rooted in love and thus spirit, Hegel is adamant in condemning its conventional characterization as a contract relation that takes “persons . . . in their individuality as self-subsistent units.”²⁸ Individuality, the conceit of contract theorists, is a fiction; consciousness knows itself only as it is recognized by others. The husband-wife relationship is indeed the “primary and immediate form in which one consciousness recognizes itself in another, and in which each knows that reciprocal recognition.”²⁹ Reciprocal recognition allows of no distinctions between wife and husband, between woman and man; such distinctions as exist are contingent, the residue of our purely physical natures.

Love, then, depends on the mutual recognition of beings who have consciousness in common; who, acknowledging this spiritual kinship, are led to sublimate their individuality in favor of what they have in common and what they are in common. The language of love, which for Hegel becomes the language of marriage and the family—at least in its initial incarnation—is then a radical language of equality that attributes to men and women the common limitations of contingent individuality and the common possibilities of evolving consciousness. Hegel's position thus far appears to be egalitarian and emancipatory—an integral product of the dialectics of consciousness as the crucible of human relations.

If the models of woman as lover and as wife suggest an equality of common consciousness with men, the model of woman as mother and parent points towards a more constricted vision of the female, albeit, of the male as well. For in parenting children, the loving partners complete their love and manifest their union in a fashion that renders them superfluous. Their purpose (both dialectical and historical) is achieved, and their union is given objective expression in the form of offspring; their continued existence as partial and contingent beings thus becomes incidental—unnecessary to the continuation of the genus and irrelevant to the unfolding of the dialectic, whose interest is transferred to the children.³⁰

Both male as father and female as mother display a common incompleteness prior to procreation and a common superfluity following procreation; but it is as mother that the female first takes on the appearance of a being not only different than but potentially less than and thus—by the standards of the dialectical evolution of consciousness—inferior to the male. For though she is the equal of the male in love and marriage, the female possesses a physical nature that constrains her to play an increasingly restricted role in the evolving dialectic of family, community, and state. As conditioned by her physical characteristics, woman “has her substantive destiny in the family, and to be imbued with family piety is her ethical frame of mind.”³¹

The edifying equality of the love relation in which both male and female overcome their distinctions in expressing the commonality of their spirit is superseded by the marital-parenting relation created by love, which, however, relegates the female to a static role inside the household. She is thereby removed from the dialectical dynamic that will take the male—who although like the female continues to live a “subjective ethical life on the plane of feeling” within the family—out into the larger ethical world of community and state where, as a citizen, he will graduate to higher forms of consciousness and freedom.³² The woman receives a certain dialectical compensation: she is given important ethical responsibilities within the family, becoming a guardian of its mores and an instrument of its rituals—a paragon of piety, upholding the norms of household ethical life on behalf of her husband and her children as well as on behalf of her own being. But she pays a high price for her piety, for she loses the interest of the dialectic and is unceremoniously dropped from its progressing history of emancipation. Charles Taylor, we have already noticed, reassures us that Hegel “throws away nothing” in his dialectic, but he seems quite clearly at this

point to have thrown away half of the human race.³³

Curiously, the third female paradigm in Hegel, woman as sister, seems to restore to women the equality lost to them as mothers. Motherhood defines and is defined by female sexuality and reproductivity, thereby drawing women back into the contingent physical natures that constitute their inferiority to men. But the sister-brother relation is deerotized, and the sister undergoes a denaturation in relation to her brother that frees her of desire even as it leaves her with her duties to piety. Hegel's argument here is drawn from his reading of *Antigone*:

An unmixed intransitive form of relationship holds between brother and sister. . . . They are the same blood, which, however, in them has entered into a condition of stable equilibrium. They therefore stand in no such natural relation as husband and wife, they do not desire one another; nor have they given to one another, nor received from one another, this independence of individual being; they are free individualities with respect to one another.³⁴

Hegel's distrust of eroticism here echoes Rousseau's. Rousseau saw in desire the source of a debilitating dependency and thus inequality. The passions that are the glory of sexual relations must nonetheless be overcome if society is to be just: civilization thus entails a denaturation that is the goal of all of Rousseau's civilizing protagonists—Julie and Wolmar in *The New Heloise*, Emile and Sophie in *The Emile*, Rousseau himself in the *Confessions*.³⁵ Hegel, more dialectical, does not try to eliminate sexuality. As we have seen, it is the origin (if not the terminus) of love and marriage, and more generally, in the form of generic desire, serves as the dialectical catalyst of all historical change.³⁶ Nonetheless, passion limits as it catalyzes, and *Antigone*'s strength is that she is pure, cleansed by the brother-sister relation of both her desire and her dependency. In her sisterly purity she can apprehend in her brother a "being whose nature is unperturbed by desire and is ethically like her own . . . the indifference characteristic of particular existence and the ethical contingency thence arising are, therefore, not present in this relationship; instead, the moment of individual selfhood, recognizing and being recognized, can here assert its right."³⁷

Antigone represents a moment not of union but of supreme individuality; but it is a moment of individuality that lies beyond the union of love rather than before it. As the moment of individuality on the far side of union, the brother-sister relation approaches the limits of family life altogether. Here the family's circumscribed life is broken up and passes beyond itself. This is a dramatic turning point in Hegelian

thought as well as in the progress of the dialectic. Brother and sister alike are poised on the threshold of a new existence that will carry them beyond the family as particular free individuals no longer defined by their physical natures and the desires that attend them. After all, in Hegel's rendering of the story, if not in Sophocles', *Antigone* is the first great tale of a woman liberated from the bonds of paternal and political obedience in the name of a higher (although still familial) duty.³⁸

At this crucial junction, however, Hegel loses courage and, abandoning the equality of sister and brother, restores Antigone and the female race to the bondage of history. Moreover, he accomplishes the reversal with what, by his own dialectical standards, appears to be an ad hoc device harking back to the very physical nature that dialectics supersede. Despite the parity associated with their individuality, brother and sister are dealt different destinies. The brother inhabits his individuality fully and so "leaves the immediate, rudimentary, and therefore, strictly speaking, negative ethical life of the family, in order to acquire and produce the concrete ethical order which is conscious of itself" (the state and the law).³⁹ But the sister is abruptly and inexplicably denied hers; instead, "like the wife" (from whom, however, we imagined Hegel had just distinguished her!) she "remains director of the home and preserver of the divine law."⁴⁰ Because they retain responsibility for divine law, women may seem here to possess a higher duty than men. And in *The Phenomenology of Spirit*, Hegel does emphasize the mutual dependency that obtains between divine law (the province of the woman in the family) and human law (the sphere of men as citizens), neither of which are "self-complete." Yet there is no question which of the two is dialectically the more advanced, no question that the sphere of politics and the law is more universal, and the brother who frequents that sphere a more fully actualized representative of human consciousness. For he alone is permitted to continue on the journey to freedom's actualization in the real world, while the sister, her emancipation exposed as a ruse, is chained up again in the parochial little temple of familial piety that is Hegel's household.

An analogous derailment occurs in Hegel's fifth description of the female type: the woman as child. Indeed, it is the very same derailment. For here, as with the sister, the daughter's initial identity seems free of the dependency that issues from desire in the relations of grown women to grown men. Indeed, the woman as child occupies a realm that is not only free of desire (Hegel is not Freud!) but is also free of the

particularities of gender. Hegel's liberal remarks on the rights of children are unpunctuated by gender distinctions. As the outcome of and the justification for the union of the parents, children stand in a powerful historical dialectical position, in possession of rights the parents cannot abrogate. In children, the unity expressed subjectively in the parents' love for one another acquires a unity that "exists externally, objectively, and explicitly."⁴¹ This entails that "children are potentially free and their life directly embodies nothing save potential freedom. Consequently they are not things and cannot be the property either of their parents or others."⁴² Indeed, it is the child finally who justifies the familial tie, for "the child, contrary to appearance, is the absolute, the rationality of the [marital] relationship; he is what is enduring and everlasting."⁴³

The status of children as "end" of the family (*end* in the sense of both object and terminus), is reflected in Hegel's remarks on their education. The education of children, girls and boys alike, has the "negative aim of raising children out of the instinctive, physical, level on which they are originally, to self-subsistence and freedom of personality and so to *the level on which they have power to leave the natural unity of the family*."⁴⁴ The capacity to leave the family, the aim of all education, is possessed by all grown children, and would seem to enable daughters no less than sons to take their places, not only (as Hegel allows) in new families of their own, but also in the larger community of society and the state.

Yet, once again, Hegel interdicts the logic of dialectic: he imposes on the equality it appears to yield certain ad hoc restrictions that apply exclusively to daughters. In concluding his discussion of the rights of children and the education deemed proper thereto, Hegel commences with this apparently gender-blind assertion:

The ethical dissolution of the family consists in this, that once the children have been educated to freedom of personality, and have come of age, they become recognized as persons in the eyes of the law and as capable of holding free property of their own and founding families of their own.

To this point, the text is rationally coherent and emancipatory. But then a wholly ad hoc and contingent conclusion is tacked on:

The sons as heads of new families [and thus as potential citizens], the daughters as wives.⁴⁵

With a penstroke, Hegel herewith restores all of the limitations associated with female reproductive nature that the gender-blind discussion of generic children had seemed to remove. Ad hoc constraints on women again displace the logic of dialectic. Children with like rights abruptly become boys and girls with radically different entitlements.

Nonetheless, the general image of women that emerges from Hegel's discussion both in the *Phenomenology* and the *Philosophy of Right* is far less offensive than allusions to plants and the ironies of the female sex might seem to promise. Women appear, at very worst, to exist for Hegel as incomplete and partial beings only in the way that men appear as incomplete and partial beings—which is to say as projections of their contingent physical natures that are incomplete and, with respect to the whole, mutually complementary. And although women are incomplete, their responsibilities do engage them in such higher forms of consciousness as love, piety, and ethical life—if only within the family.

At best, women are a good deal better than this for Hegel. They are also capable of the equality of higher beings who can move beyond desire, beyond physical differentiation, beyond nature to the realm of common spiritedness, common consciousness, and common engagement in the dialectical life of reason as it actualizes itself in the world. As manifestations of consciousness, they can throw off the “rind” of nature no less than men. Women and men alike exist on several levels for Hegel: as partial beings who need each other to complete the life of the genus to which they belong; as potential ethical beings engaged in the ethical life of the family; and as spiritual beings capable of self-transcendence—the overcoming of their own distinctive natures based on sexual (physical) differences—on the way to manifesting their spiritual natures. In his early *System of Ethical Life*, Hegel is adamant that men cannot be defined by such determinate characteristics as gender. “As a free being,” he argues, “he must not regard himself as absolutely bound up with any single characteristic of himself.” If, with Kant, we assume the sexual organs to constitute such a characteristic, then to treat men as “an absolute thing, as absolutely bound up with a specific characteristic, is supremely irrational and utterly disgraceful.”⁴⁶

In sum, Hegel's positioning of women in the dialectic, although afflicted with the fallout of ad hoc prejudices, seems potentially radical. Indeed it admits a perspective on women that would not be altogether unsuited to a politics of emancipation. Understandably, this emancipation is circumscribed by the spirit of liberalism—depending on the abstract notion of personhood, and assuming an undifferentiated

universality common to the two sexes. Inasmuch as some recent feminists have begun to question the bias of universalist approaches to gender equality, Hegel's emancipatory project may be problematic.⁴⁷ But such complaints are both anachronistic and beside the point for a historical evaluation of Hegel's views on women. One can hardly expect him to advance a postmodern critique of the universalist spirit prior to the promulgation of universalism itself. Nor is there anything in Hegel's discussion of gender differences that suggests the spirit of different but equal that is favored by such feminists or that makes female particularity a starting place for female equality (let alone superiority).

In any case, the promise of an emancipatory spirit in Hegel's treatment of women is never realized. On the contrary, women finally are made to drop out of the historical process. They are not simply incomplete as men are incomplete, they are incompleteable. Left behind on the beach as a kind of flotsam of the dialectic in which spirit has lost interest, they remain as exemplars of truncated consciousness, of partial reason, of unrealized potentia, and of incomplete liberation.⁴⁸ Hegel of course labors mightily to embellish this flotsam, portraying it in the glamorous and encompassing language of dialectics. But there is no escaping the conclusion that the idea of dialectical consciousness cannot bear the weight of incoherence placed on it by the sorts of undialectical contradictions associated with oxymorons such as truncated consciousness and partial reason.

This is particularly evident in *The Philosophy of Nature*, where Hegel tries to tease out of the female's physical character an explanation for her incomplete historicity as a conscious being. He wants the female to share consciousness, yet be something less than fully conscious. His solution is to associate her with consciousness in its earliest stages: as immediate sense experience and as abstract, undifferentiated universality; then, to surround and constrain her with those very characteristics of determinate gender that he elsewhere insists consciousness must supersede. Thus while men manifest consciousness as "the self-consciousness of conceptual thought and the volition of the objective final end," women manifest it "in the form of concrete individuality and feeling."⁴⁹ Hegel's devious plan seems to be to demonstrate that women play a dialectical role as vehicles for consciousness in its immature forms, but they drop out of the picture as consciousness evolves into its more mature and liberated forms—that is, as law and the state, incarnated in men by their potential for lawgiving and citizenship. Men thus emerge with forms of consciousness that are "powerful and active"

while women are left with forms that are "passive and subjective."⁵⁰

Reasoning from rough analogy, Hegel tries to provide physiological correlates for these abstractions in the female's reproductive anatomy and general physical nature. Women are generic humans but incomplete men. In "the original identity of their formation, the same type underlies both the male and female genitals," Hegel reports in his gloss on the inexact nineteenth century science of developmental anatomy; given this generic identity, gender difference are accounted for by differentiation. Females and males possess the same generic parts in common, but different parts become "essential" in each gender, distinguishing them from one another: "In the female [the essential part] is necessarily the undifferentiated element, while in the male it is the sundered element of opposition."⁵¹ Now, remembering that for Hegel "in time nature comes first, but the absolute prius is the Idea—the absolute prius is the finis, the true beginning, Alpha is Omega," it is evident that for him the male acquires its precedence over the female because its genital characteristics represent the sundered, differentiated form of the generic genitalia possessed by the female; this makes the male, in dialectical terms, the higher form, the finis into which sundered nature grows, and thus also (despite the preeminence in time of generic female anatomy) the prius or true Alpha of nature.⁵² Once the dialectical preeminence of male over female genitalia is established, Hegel can assimilate differentiated male physical characteristics to advanced features of consciousness: "The simple retention of the conception in the uterus, is differentiated in the male into productive cerebrality (*das produzierende Gehirn*) and the external vital."⁵³ With this argument in the background, he can proceed in *The Philosophy of Right* to claim that "the differences in the physical characteristics of the two sexes has a rational basis and consequently acquires an intellectual and ethical significance."⁵⁴ The character of the argument is evident toward the end of *The Phenomenology of Spirit* where Hegel satirizes womankind as "the everlasting irony in the life of the community" that, with its retarded consciousness, "changes by intrigue the universal purpose of government into a private end, transforms its universal activity into a work of this or that specific individual, and perverts the universal property of the state into a possession and ornament for the family. Woman in this way turns to ridicule the grave wisdom of maturity . . . to private pleasure . . . she makes this wisdom the laughingstock of raw and wanton youth, an object of derision and scorn, unworthy of their enthusiasm."⁵⁵

Now at this point the argument approaches absurdity—the more

difficult to comprehend because this passage is found in *The Phenomenology of Spirit*, where Hegel still presents himself as a young and ardent devotee of the Phoenix. The ad hoc nature of his logic becomes simply nonsensical: nonsensical because it draws inferences from nature that nature cannot support, nonsensical because its technical portrait of anatomical nature is badly flawed, and above all, nonsensical because it contradicts everything Hegel otherwise tells us about dialectic and the relations dialectic conceives between nature and spirit. Inverting their proper relationship, it insists that nature rather than the idea is the prius for female consciousness, and that the rind that the female casts off is the rind of spirit. Although everywhere else in his work both the youthful and the senatorial Hegel proclaim the dialectical preeminence of spirit over nature, with women, nature is given preeminence over spirit. When he remarks that the differences in the physical characteristics of the sexes has a rational basis that endow them with intellectual and ethical significance, Hegel blithely stands the dialectic on its head, giving it (as Marx was to do decades later) a material base.⁵⁶ So that to maintain the special position of women, Hegel is forced into a kind of proto-materialism in which the dog of spirit gets wagged by the tail of nature.

To argue that women are defined by the *natural* differences that separate them from men as physical entities rather than by the common consciousness that identifies them with men as spirited entities is to argue that they are creatures beyond the pale of dialectics. Where everywhere else dialectic triumphs, with women it is defeated by an obstinate nature that it can neither sublate, nor supersede, nor overcome. Nature may serve all other forms of consciousness as a transient vehicle for the actualization of spirit, but for women it is a quicksand bog from which there is no escape.

Hegel opens his discussion of nature by quoting Goethe's *Faust*:

Encheiresis naturae chemistry calls it,
Mocks itself, knows not what befalls it;
Holds the parts within its hand,
But lacks, alas, the spiritual band.⁵⁷

Hegel's own treatment of women is an *encheiresis naturae*, a materialist reduction in which the spiritual band vanishes, an approach that defies his own definition of the philosophy of nature:

The study of nature is therefore the liberation of what belongs to spirit within nature, for spirit is in nature in so far as it relates itself not to another, but to itself.

This is likewise the liberation of nature which in itself is reason. . . . Nature is, so to speak, the bride espoused by spirit.⁵⁸

If nature is the bride espoused by spirit, in Hegel the bride is stood up, spirit going its own way as a bachelor, unenticed by the female gender. Again and again, Hegel is at pains to show that spirit shines through and ultimately transforms even the least likely of subjects. A man who is a criminal still partakes of spirit;⁵⁹ frailty and weakness share in God's essence;⁶⁰ so powerful is spirit that the lowest material objects express a kind of yearning to it, and even "the stones cry out and lift themselves up to spirit!"⁶¹ Criminals, evil, weakness, the very stones are moved by spirit, for "man is a being set against nature" who discovers behind and within it the seeds of his spirit's liberation.⁶² Not, however, women, who seem thereby excluded not merely from spirit but from nature, too. For nature "belongs to the pathway of return" back to spirit;⁶³ which is to say, to remain static, petrified beings, women must fall away not only from spirit but from nature impregnated with spirit, away from the Hegelian system altogether. For that system has as its object the demonstration of how nature and necessity are overcome, not dualistically or from without by an external realm of ideas to which women or evil or otherness do not intrinsically belong but from within, dialectically, by the very forces that appear to constitute that which is obstructive and resistant to progress in their natures. Thus Hegel's discussion of reproduction cannot help but portray women as contributing to evolution even as they resist the synthetic universal (i.e., the state) in the name of their individuality (i.e., the family).⁶⁴

There are a number of useful dialectical analogs in Hegel for what the male/female relationship might look like were it confined to the logic of dialectics. The master/slave relationship in *The Phenomenology of Spirit* is, for example, rooted in a dialectic that inverts the seeming bondage and makes the slave free and the master a servant of his subject; this eventuates in the emancipation of both parties as a necessary step in the march of consciousness towards liberation.⁶⁵ Likewise, in *The Philosophy of History*, Hegel makes clear that ancient peoples who do not yet possess liberty (as in the case of oriental despotism, for example) are held in bondage by their ignorance of their nature as spirit. They are not free because they do not realize their nature is spirit and thus the spirit of freedom.⁶⁶ So deep does the spirit penetrate that a spark of God is found everywhere; even when God in a certain sense dies, "the human, the finite, frailty, weakness, the negative, is itself a divine moment, is in

God himself."⁶⁷ The spirit walks even in Lucifer, yet it walks out on women. Why?

The concrete examination of women suggests that much of what constitutes their womanhood is relational in character, a consequence of their feelings for and responsibilities toward their husbands and their children, who between them, capture the meaning of female sexuality (coitus and reproduction). It is just for this reason that as sisters and daughters they seem free of so many of their female burdens. Moreover, the engagement of women as conscious beings in the dialectical history of consciousness ought to make them participants in the unfolding story of liberty.

Hegel seems to be up against a profound and unavoidable paradox. All of the contingency in the world cannot rob women of their consciousness, and finally, Hegel himself must insist, consciousness is singular not plural, common not distinctive. "There cannot," as he says of man and God, "be two kinds of reason and two kinds of spirit."⁶⁸ If God and Man share the same reason, then surely man and woman share the same reason. Indeed they are rational because they participate in objective consciousness that has its own universal logic (dialectics). To be sure, different beings possess different particularistic faculties that may differ from one class of creature (divine and human, male and female, ancient and modern) to another; and the logic of consciousness being dialectical, it manifests itself in stages that are distinctive. For example, we can think of consciousness under traditional oriental despotism as still unfree, the consciousness of Greek slaves as about to become liberated, and traditional female consciousness as aware of freedom but not yet emancipated. Nevertheless, conscious beings are all bearers of full liberty just as the consciousness they partake in is progressive and emancipatory. Consciousness in history is mirrored by the evolving consciousness of individuals. The capacity of a conscious individual to comprehend reason in God is in fact nothing other than the capacity to comprehend reason in himself.

To make women participants in the history of consciousness and at the same moment to declare them exempt from its progressive liberation, Hegel must make a muddle of his logic. He must give up the language of nature as a "system of stages," one proceeding of necessity out of the other;⁶⁹ he must also abjure the dialectical rhetoric of conflicting historical moments whose contradictions issue in the sublation and supersession of their individual particulars. He can no longer speak of moments at all but must introduce the notion of

elements, of an otherness that is not dialectical but "merely evil," of forces whose resistance cannot be used by the cunning of reason to further the project of liberation, but must be "suppressed."⁷⁰

Women then can be exempted from the logic of consciousness as a race only through the destruction of dialectic⁷¹—the introduction of a form of special pleading in tension with the entire Hegelian system. The special plea Hegel enters here endows women with an ad hoc natural identity that is uniquely immune to the laws by which nature otherwise overcomes itself through dialectical evolution. This ad hoc identity enables Hegel to marginalize women and thus rationalize the prejudices of his time.

Or so it would seem. But can we really accept that a philosopher whose task was to break "with the old order of things hitherto prevailing, and with the old ways of thinking . . . and let them all sink into the depths of the past and to set about its own transformation"⁷² would permit his system to be wrecked so that he might act as a foolish conduit for contemporary prejudice? Why should he resist the implications of his own liberal logic, which support the eventual liberation of women as conscious beings? Peter Stillmann and a number of other commentators have persuaded themselves that the force of contemporary prejudice is sufficient to coerce Hegel into special pleading on behalf of chauvinism.⁷³ His philosophy is bent out of shape by ad hoc prejudices. In their absence, such commentators suggest, it might have conformed to a quite different template. But this is a position I cannot accept. And here our argument can finally return to the paradox of dialectics with which it begun.

What this paradox reveals is that Hegel's position on women is neither a product of contingency nor an effect of ad hoc prejudice. Rather, it is the necessary consequence of his belief that the "Prejudices" of his age are in fact *the* actuality yielded by history in the epoch of liberation. Hegel does not have to rationalize them: because they *are*, they are already rational. They need only be encompassed and explained by philosophy. Spirit may guide and direct history, but ultimately, history alone can tell us where spirit means it to go.⁷⁴ The status of women is not a matter for the Phoenix; nor is it, in the final epoch, something to be rationalized by the cunning of reason, utilizing apparent evil for eventual good. For "if in days gone by, history seems to present itself as a struggle of passions, in our time—though displays of passion are not wanting—it exhibits . . . a predominance of the struggle of notions assuming the authority of principles."⁷⁵

In short, we need not go looking for the rose in the cross of woman's bondage, because bondage *is* the rose. Hegel, The Philosopher, can neither rail against it nor change it: for, as Jean-Paul Sartre has observed, he takes himself "to be at the beginning of the end of History, that is to say, at that moment of Truth that is death." The final judgment is passed and all that remains is "to bring down the curtain."⁷⁶ Standing near if not precisely at the end of history, Hegel must believe that "at the present day we see the world full of the principle of freedom, and we see that principle brought into special relation with the constitution of the state."⁷⁷

The constitution of the state is for Hegel the Prussian constitution of the state, and if the Prussian constitution excludes women from citizenship, it does so not at daybreak, but at dusk. And at dusk, it is the Owl and not the Phoenix who hovers in the shadows: the Owl's task is only to explain and make sense of the status women have been bequeathed by a history that has run its course. The world *is* rational—to those who look at it rationally.⁷⁸ The entombment of women in those temples to *Sittlichkeit* otherwise known as nurseries, kitchens, and churches is equally rational when viewed by the philosopher standing at the end not simply of *an* epoch but at the end of the final epoch in which all history had concluded and acquired its definitive meaning. It was as an Owl that Hegel had finally to make sense not of what dialectical consciousness might have permitted women to become but what history as the actualization of reason had in fact let them become. His responsibility was to explain women as they were, not to portray them as they might be.

Thus does the tension between the hungry Phoenix and the complacent Owl that was our first subject reappear. The two birds flank the ambivalent philosopher: the Phoenix on his left shoulder urges him to repossess his ardent youth and become a revolutionary of gender, fighting for an emancipation of women already promised by the dialectics of consciousness but obstructed by the "monstrous power" of chance; yet at the same moment, the Owl roosting on his right reminds him that history is the final arbiter and that its judgment on women, now cut-and-dry, and approximating completion, must be recognized. Philosophy is, after all, "the timeless comprehension of everything in general according to its eternal determination," and what is timeless and eternal is no longer dialectical—indeed, Sartre reminds us, it is death.⁷⁹

To close the circle of our argument then, Hegel's portrait of women finally falls victim to the antinomy built into his dialectical method. The

dialectic succeeds in reconciling the great extrinsic antinomies to which it is applied, but it does so by importing into its very heart the most profound antinomy of all: the antinomy of time and the eternal, of the principles of life (dialectic) and death (history completed), of consciousness (spirit growing) and its object (knowledge completed). Spirit awakens history and infuses it with vitality, but history puts spirit to sleep again. Hegel throws away women as creatures of spirit because history, seen from the perspective of what he had to believe was the final epoch, had discarded them.

The dance of the Phoenix and the Owl concludes then in mutual annihilation. Without spirit, without the principle of resistance and change, there can be no history; but without a conclusion, absent a terminus, history can have no perceived direction, and spirit can only appear arbitrary and irrational. Hegel needs time to be endless, and he needs to end it, for unending time has no meaning, but time ended ceases to be time. Yet in providing the conclusion and thus the direction of a final terminus—a terminus, moreover, that alone permits Hegel to act as Philosopher—history freezes and thus annuls the spirit of time; but in investing history with the vital principle of change, spirit denies the possibility of a terminus. Spirit requires an end, which end, however, annihilates it. Why this is so emerges powerfully, and, for the coherence of dialectic, fatefully, in Hegel's troubled treatment of gender. As creatures of spirit, women push on toward liberation and higher being in a story whose end cannot be written. But as creatures of history, they are bound by the shackles of an ending that, if the Hegelian system is to make sense, has to be at hand. Women perish as spirit perishes: to satisfy history and The Philosopher who, to make good his systematic claims to omniscience, must stand at its end.

NOTES

1. G.W.F. Hegel, *The Philosophy of Right*, trans. and ed. by T. M. Knox, (Oxford: Clarendon Press, 1945), addition to par. 166, 263. (Numbers refer to paragraph, then page.)

The German edition of Hegel to which reference is made throughout this essay is G.W.F. Hegel, *Werke in zwanzig Bände*, (Frankfurt am Main: Suhrkamp Verlag, 1971) identified below as *Werke*. I have used available translations whenever possible.

2. G.W.F. Hegel, *The Phenomenology of Mind [Spirit]*, trans. by J. B. Baillie, (New York: Harper & Row Torchbacks edition, 1967), 496. Baillie's otherwise admirable translation (which I prefer to the recent one by A. V. Miller) translates *Geist* as "mind," giving it a too cerebral ambience. I use "spirit" throughout the essay.

3. G.W.F. Hegel, "Entwürfe über Religion und Liebe," in *Werke*, vol. 1 of *Frühe Schriften*, 244-250; the English translation cited here is T. M. Knox's in his edition of Hegel's *Early Theological Writings*, (Chicago: University of Chicago, 1948), 304.

4. G.W.F. Hegel, *The Philosophy of Nature*, trans. by M. J. Perry, 3 vols., (London: Allan & Unwin, 1970), vol. 3, 212-213. This work is a translation of the second part of Hegel's *Encyclopaedie der philosophischen Wissenschaften*, (vols. 8-10 of his *Werke*).

5. Hegel, *The Philosophy of Right*, Preface, 12-13.

6. As a young man, Hegel spent time as a tutor in Bern. His notebooks commenting on visits to the Grindelwald glacier and to Reichenbach Falls, for example, reflect a fascination with the movement of Swiss waterfalls rather than, as was the case with most visitors, astonishment with the still mountains. Water is the muse of Hegel's youth—the material analog of the Phoenix—but granite is the muse of his old age: Minerva's Owl. The mountains appear to him as a solid and forceful mass that distances the observer from nature; the free-falling waterfalls are effortless and playful, presenting an aspect of spontaneity and freedom. See "Auszüge aus dem Tagebuch der Reise in die Berner Oberalpen," in *Frühe Schriften*, vol. 1 of *Werke*, 614-616.

7. In the Preface of *The Phenomenology of Spirit*, written between 1804 and 1807, Hegel proclaims: "Our epoch is a birth-time, and a period of transition. The spirit of man has broken with the old order of things hitherto prevailing, and with the old ways of thinking, and is in the mind to let them all sink into the depths of the past and to set about its own transformation" (p. 75).

8. "This gradual crumbling to pieces . . . is interrupted by the sunrise, which, in a flash and at a single stroke, brings to view the form and structure of the new world," *The Phenomenology of Spirit*, 75. Similarly, in *The Philosophy of Nature*, Hegel writes: "The purpose of nature is to extinguish itself, and to break through its rind of immediate and sensuous being, to consume itself like a Phoenix in order to emerge from this externality rejuvenated as spirit," vol. 3, 212.

9. Thus it is that "the Owl of Minerva spreads its wings only with the falling of the dusk," *The Philosophy of Right*, Preface, 12-13.

10. "Philosophy must beware of wishing to be edifying," Hegel writes in *The Phenomenology of Spirit*, 74; see also 81.

11. Charles Taylor says quite convincingly that with dialectic, "Hegel throws away nothing," *Hegel*, (Cambridge: Cambridge University Press, 1975), 49. As becomes apparent below, women would seem to be the exception.

12. Joachim Ritter, "Hegel und die Französische Revolution," in *Metaphysik und Politik*, (Frankfurt: Suhrkamp, 1966), 192. See also Herbert Marcuse, *Reason and Revolution: Hegel and the Rise of Social Theory*, (Boston: Beacon, 1941).

13. A. Kojève, *An Introduction to the Reading of Hegel*, (New York: Basic Books, 1969), intro. by Allan Bloom, 259. Rudolf Haym, Hegel's first biographer, was perhaps the first to indict Hegel for permitting the Owl to rationalize conservative prejudices, for example, regarding the Prussian State; see *Hegel und seine Zeit* (1857).

14. Hegel, *The Phenomenology of Spirit*, 496.

15. Hegel, *The Philosophy of Right*, 263.

16. Hegel, *The Philosophy of Right*, par. 166, 114-115.

17. Hegel, *The Philosophy of Nature*, vol. 3, 174-175.

18. *Fragment on Love*, in G.W.F. Hegel, *Early Theological Writings*, ed. by T. M. Know, (Philadelphia: University of Pennsylvania Press, 1971), 304. This essay was written

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in 1797-1798, almost a year before *The Spirit of Christianity*. The original is in *Werke*, vol. 1, 244-250.

19. Rousseau both adored and distrusted women, regarding their power to incite passion in men as disruptive to just civic relations and the rule of reason but also desiring in them models of modest virtue. He imagined their denaturation as a solution to political and household order (e.g., in *The New Heloise*), even as he worshipped their tender sensibilities (e.g., in *The Confessions* and *Reveries of a Solitary Walker*). However, he never suggested using the erotic passions to cure themselves, despite the fact that in *The Social Contract* he uses particular political passions to cancel one another out. Dialectical in other respects, Rousseau never acquired the knack of a dialectics of sex. But then, in the end, neither did Hegel. For a full discussion of these issues in Rousseau, see my "How Swiss is Rousseau?," *Political Theory* 13 (November 1985): 4.

20. Of animals in general (humans presumably included), Hegel writes: "The individual as singular being is not adequate to the immanent genus . . . it feels the deficiency. [and wants] to integrate itself through with this other. [and to] bring the genus into existence by linking itself to it. This constitutes generation," *The Philosophy of Nature*, vol. 3, 172-173.

21. Hegel, *Fragment on Love*, 304-305.

22. Hegel, *Fragment on Love*, 304-305.

23. Hegel, *Fragment on Love*, 306.

24. Hegel, *Fragment on Love*, 306.

25. Hegel, *The Philosophy of Right*, par. 158, 110.

26. Hegel, *The Philosophy of Right*, par. 168, 115.

27. Hegel, *The Philosophy of Right*, par. 163, 112.

28. Hegel, *The Philosophy of Right*, par. 163, 112.

29. Hegel, *The Phenomenology of Spirit*, 474.

30. Hegel, *The Philosophy of Right*, par. 177, 118-119. In *The Philosophy of Nature*, vol. 3, 176, Hegel observes that the lower animals frequently fail to survive copulation and/or the birth of offspring. Higher creatures do, but only because they can move beyond their physical nature, whose sphere childbirth brings to a close.

31. Hegel, *The Philosophy of Right*, par. 166, 144.

32. Hegel, *The Philosophy of Right*, par. 168, 115-116.

33. See note 7 above.

34. Hegel, *The Phenomenology of Spirit*, 475-76. From the point of view of Hegel's concern to prevent women from overstepping the boundary of the family, Electra would be a much better example for him than Antigone, whose sisterly motives lie at the very boundary of the female and threaten to cross into the equality of perfect, asexual peerhood.

35. See note 19 above.

36. Desire is the principle that sets spirit in motion, and the passions are the vehicles by which history unfolds—an apparent slaughter-bench that by the cunning of reason, however, yields rationality to the world. See *The Philosophy of History*, trans. by J. Sibree, ed. by C. J. Friedrich, (New York: Dover Book Edition, 1956), 27-32. The closer we approach to the actualization of reason in history, however, the less active are the passions in its unfolding, *The Philosophy of History*, 35.

37. Hegel, *The Phenomenology of Spirit*, 477.

38. Antigone is not emancipated in the fashion of a modern woman (see Anouilh's version of the play for this anachronistic evolution of theme), for she remains bound to the

gods of the household. But she is liberated from husband and from desire, and this is liberation enough in Hegel's terms.

Judith N. Shklar finds in *Lysistrata* a contrasting companion piece to *Antigone*; see her *Freedom and Independence: A Study of the Political Ideas of Hegel's Phenomenology of Mind* (Cambridge: Cambridge University Press, 1976), 76-84.

39. Hegel, *The Phenomenology of Spirit*, 477.

40. Hegel, *The Phenomenology of Spirit*, 478.

41. Hegel, *The Philosophy of Right*, par. 173, 117.

42. Hegel, *The Philosophy of Right*, par. 175, 117.

43. G.W.F. Hegel, *System of Ethical Life and First Philosophy of Spirit*, Part I (Albany: State University of New York Press, 1979), 128.

44. Hegel, *The Philosophy of Right*, par. 175, 117-118, emphasis added.

45. Hegel, *The Philosophy of Right*, par. 177, 118.

46. G.W.F. Hegel, *System of Ethical Life and First Philosophy of Spirit*, Part I (Albany: State University of New York Press, 1979), 128.

47. I have in mind writers like Carole Gilligan, who have argued that equality does not require that women be assimilated to some putatively genderless universal—which often turns out to be a disguise for universalized male attributes.

48. In *The Philosophy of Right*, Hegel says of nations who appear to fall by the historical wayside: "The declining nation has lost the interest of the absolute." But though individual nations may do so, surely it seems odd that women as a class should also have "lost the interest of the absolute." Nonetheless, this seems to be the case with women who arrive at that point when they become paragons of household virtue, par. 347, 218.

49. Hegel, *The Philosophy of Right*, par. 166, 114.

50. Hegel, *The Philosophy of Right*, par. 166, 114.

51. Hegel, *The Philosophy of Nature*, vol. 3, 174.

It is ironic that although Hegel wished to make the female's anatomy the generic and the male's the differentiated (and thus, dialectically, the more advanced), he is drawn by the prejudices of his own age's medicine into contradictory descriptions: for example, "the lips of the female pudenda are shrunken scrotum" or "the medial line of the scrotum is split in the female and forms the vagina," *The Philosophy of Nature*, vol. 3, 174-175. Such descriptions actually render the male as the generic and undifferentiated, and the female as the differentiated and thus, dialectically, the more advanced! Eve from Adam's rib may make Eve Adam's subordinate in conventional terms but from the point of view of dialectic she becomes the more advanced and thus the true prius.

52. *The Philosophy of Nature*, vol. 1, 211. Presumably Hegel means not only that Alpha is Omega but that Omega is Alpha, the telos by which nature achieves its full maturity. In other words, essence is potentia.

53. *The Philosophy of Nature*, vol. 1, 145. Hegel's confused anatomy lesson gets denser as it progresses: "The uterus in the male is reduced to a mere gland, while the male testicle in the female remains enclosed within the ovary, fails to emerge into opposition, and does not become an independent and active cerebrality. The clitoris, moreover, is inactive feeling in general." Aside from its rehearsal of silly prejudices concerning actual female anatomy, these remarks are astonishing for the manner in which they pass from physical description to spiritual principles—from "remaining enclosed" to "not independent" to "inactive" and noncerebral.

54. Hegel, *The Philosophy of Right*, par. 165.

55. Hegel, *The Phenomenology of Spirit*, 496.

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56. Hegel, *The Philosophy of Right*, para 165.

57. Hegel, *The Philosophy of Nature*, vol. 1, 202. *Encheiresis naturae* means to grasp nature directly with the hands, as Goethe imagined the materialists and positivists of his time thought they could do.

58. Hegel, *The Philosophy of Nature*, vol. 1, 204.

59. "But the ugliest of men, or a criminal, or an invalid, or a cripple, is still always a living man. The affirmative life subsists, despite his defects," *The Philosophy of Right*, addition to par. 258, 279.

60. "If spiritual contingency or caprice goes forth into evil, that which goes astray is still infinitely superior to the regular movement of stars, or the innocent life of the plant, because that which errs is still spirit," *The Philosophy of Religion*, vol. 1, 210, emphasis in original. But apparently not women, whose errors uncouple them from spirit's moving train.

61. Hegel, *The Philosophy of Nature*, vol. 1, 206.

62. "What is meant by man is a being who sets himself in opposition to his immediate nature," Hegel, *The Philosophy of Religion*, vol. 3, 47.

63. "The philosophy of nature itself belongs to this pathway of return, for it is the philosophy of nature which overcomes the division of nature and spirit, and renders to spirit the recognition of its essence in nature," Hegel, *The Philosophy of Nature*, vol. 1, 205.

64. Hegel, *The Phenomenology of Spirit*, 496-497.

65. Hegel, *The Phenomenology of Spirit*, 228-240.

66. "The Orientals have not attained the knowledge that spirit—man as such—is free; and because they do not know this, they are not free," Hegel, *The Philosophy of History*, 18. Partakers in history over time—classes of individuals if not particular individuals—are bound to become free, however, because the history of the world is "none other than the progress of the consciousness of Freedom," *The Philosophy of History*, 19.

67. Hegel, *The Philosophy of Religion*, vol. 3, 98.

68. Hegel, *The Philosophy of Religion*, vol. 1, 33.

69. Hegel, *The Philosophy of Nature*, vol. 1, 212.

70. Precisely this antidialectical language finds its way into, of all places, the chapter on guilt and destiny in *The Phenomenology of Spirit*, where Hegel derogates womankind for persisting in youthful, privatizing, individualistic behavior "hostile" to the universal purposes of history (see 496-497). The word "suppress" fairly flies off the page. The contrast in the German terms is if anything even more striking: in place of the usual dialectical term *aufheben* suggesting upward movement—an uplifting, a superseding, a transcending, Hegel uses the verb *unterdrücken*, which connotes a downward pressure—a putting down, a repressing, or a persecuting.

71. There is nothing contrary to dialectics in historical explanations for the enslavement of particular groups of women at specific moments in history; the problem arises when Hegel excludes them permanently from participation in the dialectical logic of liberation that eventually emancipates all conscious beings. It would be as if he argued not only that Orientals once lived in slavery but that all Orientals, qua Orientals, were fated to live forever in slavery, even when they became conscious of their natures as rational and thus potentially free beings—even when they participated say as immigrants in a modern, liberated society. In other words, it would be as if there was something called "oriental consciousness" that was radically and permanently distinct from Caucasian consciousness, rather than two dialectically complementary sides of a single consciousness that at different periods of history manifested itself in different stages.

72. Hegel, *The Phenomenology of Spirit*, 75.

73. Peter G. Stillman, "Hegel's Idea of the Family" (Paper delivered at the American Political Science Association Convention, Washington, D.C., 28 August 1980).

74. This is the meaning of Hegel's assertion that *Die Weltgeschichte ist das Weltgericht*. "The insight then, to which philosophy is to lead us is that the real world is as it ought to be," *The Philosophy of History*, 36. A similar passage in *The Philosophy of Right* announces that "the realm of fact has discarded its barbarity and unrighteous caprice, while the realm of truth has abandoned the world of the beyond and its arbitrary force," par. 360.

Some commentators believe Hegel was less secure about the convergence of spirit and history than these passages suggest. Emil L. Fackenheim, for example, maintains that Hegel "is by no means as certain as is commonly supposed that this unity of truth and fact is—as, after all, it must be—*itself* fact," *The Religious Dimension in Hegel's Thought*, (Chicago: University of Chicago Press, 1982), 234. And it is true that in *The Philosophy of History* Hegel writes of a future in which not Prussia but America may assume the "burdens" of history. But he dismisses the relevance of such speculative futures to the philosopher's tasks, *The Philosophy of History*, 86. Indeed, as I have argued, to regard history as incomplete and thus philosophically inconclusive is to place Hegel himself *in media res*, one more partially seeing philosopher whose vision is no better than Plato's or Spinoza's and whose scientific system can claim no special veracity.

For a pertinent discussion here, see Schlomo Avineri, "The Owl of Minerva and the Critical Mind," in *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972), ch. 6.

75. *The Philosophy of History*, 35. In the same passage, Hegel acknowledges that while universal reason "does realize itself," this realization may not include "individuals empirically regarded," who may be held under the "monstrous power" of "chance and speciality." The position of women, however, patently does not fall into this category, as it is both rational and ethical. Moreover, women constitute a class of rational beings, whereas Hegel is referring here to isolated individual human beings caught up in the interstices of history.

76. Jean-Paul Sartre, "Hegelian Dogmatism," in *Critique of Dialectical Reason*, (London: Humanities Press, 1976), 21-22. There is ample evidence for this interpretation. In *The Philosophy of History*, Hegel relates how Jupiter first put "a constraint upon Time, and set a bound to its principle of decadence" (p. 76). That constraint is the State as a moral work, but it is also thought itself constraining time as the "negative element in the sensuous world." For "Thought is that *Universal*—that *Species* which is immortal, which preserves identity with itself. The particular form of Spirit not merely passes away in the world by natural causes in Time, but is annulled in the automatic self-mirroring activity of consciousness" (p. 77).

This passing away or annulling is of course "death" only in the traditional sense, only as the eternal spells the end of the temporal. The frozen face of eternity, embracing all, losing nothing, is Hegel's reason realized in history. The philosopher's ascension to immortality entails the death of all that is encompassed by his knowledge—in this case, all of history.

77. Hegel, *The Philosophy of Religion*, vol. 1, 255.

78. "To him who looks upon the world rationally, the world in its turn presents a rational aspect," *The Philosophy of History*, 11.

79. Hegel, *The Philosophy of Nature*, vol. 1, 207.

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Community and Indigence: A Hegelian Perspective on Aid to the Poor

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Hegel's work is often cited as the "inspiration" for much of contemporary communitarian theory.¹ The concrete substantive implications of Hegel's work, however, are often unclear. In this paper, I will examine the concrete implications of a particular aspect of Hegel's political theory: the problem of poverty. Amy Gutmann has recently argued that communitarian values "are properly seen as supplementing rather than supplanting basic liberal values."² I believe that Hegel's treatment of poverty in his political theory offers constructive insights to "supplement" systems of liberal values.

Hegel, perhaps uniquely among liberal political philosophers prior to the twentieth century, assigns a central structural role in his political thought to the notion of poverty.³ The problem of poverty, for Hegel, constitutes one of the primary sources of particularity which must be mediated in order to actualize the concept of freedom. No previous liberal thinker had suggested that the problem of poverty should constitute a fundamental concern of political philosophy.

Hegel's political thought in general, and his concern for the problem of poverty in particular, are grounded in his notion of freedom as self-actualization: "the realm of right is the realm of actualized freedom, the world of spirit produced from within itself as a second nature."⁴ Unless self-actualization is an essential element of the social realization of freedom, Hegel asserts, the ethical life of a community will necessarily incorporate a dualistic division between the universalistic requirements of social norms and the particular desires of the individual.⁵ The actualization of freedom in substantial ethical life must therefore

¹See Avineri and de-Shalit (1992, pp.2, 120-1), citing Hegel's influence on C. Taylor, M. Sandel and R. Unger.

²Gutmann 1992, p. 133.

³Hegel has often been described as a conservative, "the philosopher of the Prussian *Restoration*" (Westphal 1993, p. 235). Westphal argues, persuasively, that such a view is "incredible," and provides a helpful discussion of the deep continuity between Hegel's political thought and the liberal tradition.

⁴Hegel 1991, S4 p. 35. As Wood (1990, p. 238) summarizes Hegel's argument: "the deepest need of individuals is to actualize their rational nature"; this need can be satisfied "only by contributing to the state as a collective end."

⁵"The universal unity . . . is the soulless community which has ceased to be the substance . . . of individuals . . . Because the ethical substance is the only *true* Spirit, the individual therefore withdraws into the *certainty* of his own self" (Hegel 1991, S477 p.290).

ground the reconciliation of the individual will with the norms and rules of the community.

Hegel claims that substantial ethical life is realized only in a particular form of community. The unitary individual will does not recognize the commonality of her particular interests with the interests of the community.⁶ In the state, however, individuals consciously acknowledge this commonality as essential. The state is thus characterized by its ability to induce the development of a universal standpoint in its members.⁷ Hegel defines the universal will as the will which supersedes limitation and particular individuality.⁸ In transcending particularity, the universal will recognizes the norms and laws of the community as “*its own essence*, in which it has its *self-awareness*.”⁹

Since the universal will experiences laws and norms as extensions of itself, rather than as constraints, such a will is free: in inducing the development of a universal standpoint, the state actualizes freedom. Poverty constitutes an important problem for Hegel precisely because poverty undermines the state’s role in actualizing freedom in ethical life: “[i]n the emergence of poverty, the power of particularity comes into existence in opposition to the reality of freedom.”¹⁰

Thus, Hegel’s accounts of ethics and politics are intrinsically linked. Substantial ethical life can only be achieved through a form of life structured by political institutions: “The *community*, the superior law whose validity is openly apparent, has its real vitality in the government as that in which it has an individual form.”¹¹ But political institutions must instantiate ethical rationality: “The state is the actuality of the ethical Idea—the ethical spirit as substantial will.”¹²

Political institutions are rational because they will actualize or embody ethical substance. Yet the intrinsic value to be realized through political institutions (freedom) is categorically distinct from the instrumental means (political institutions) necessary to realize this value. It is Hegel’s grasp of the categorically distinct, yet substantively interdependent, characters of ethical and political theory that allows Hegel to articulate an account of the institutional implications of ethical propositions.

Thus, I suggest, Hegel is uniquely well equipped to explore the political and institutional commitments implicit in an ethical standpoint. In particular, since Hegel is a seminal figure in communitarian thought, his discussion of the problem of poverty has the potential to shed light on fundamental commitments implicit in communitarian thought. In articulating the political implications of an

⁶Hegel 1991, S153 p. 196.

⁷Hegel 1991, S260 p. 282.

⁸Hegel 1991, S24 p. 54.

⁹Hegel 1991, S147 p. 191.

¹⁰Hegel 1991, pp. 453–4.

¹¹Hegel 1979, p. 272. “Spirit is the *ethical life* of a nation in so far as it is the *immediate truth*—the individual that is a world” (Hegel 1979, p. 265). “It is in the life of a people or nation that the *Notion* of self-conscious Reason’s actualization . . . has its complete reality” (Hegel 1979, p. 212).

¹²Hegel 1991, S257 p. 275. “The basis of right is the *realm of spirit*” (Hegel 1991, S4 p. 35).

important school of contemporary value theory, Hegel's treatment of the problem of poverty remains centrally relevant to modern political discourse. In addition, I will argue that Hegel's analysis of the problem of poverty grounds powerful insights which should be of interest to political philosophers generally.

In Section I, I will examine a tension in Hegel's account of the role of the state in addressing the problem of poverty. In Section II, I will explore the relationship between (i) the notion of the state developed in Hegel's early political writings and (ii) the requirements of his systematic philosophical analysis. In Section III, I will argue that, despite Hegel's reservations regarding the role of the state, the logic of his mature political theory requires that the state intervene to mediate the problem of poverty in civil society. In Section IV, I will argue that Hegel's insights remain relevant to modern debates concerning the appropriate role of the state in combating poverty.

I. Poverty and the Hegelian State

Hegel's account of the state is composed of successive moments of the idea of freedom, each of which represents a stage in the self-realization of the will. The full development of the idea of the will entails the realization of actual freedom.¹³ Political institutions are to be "judged by their capacity to further and sustain our mutual desire for freedom."¹⁴

The realization of actual freedom requires that all particularity must be transcended in the transition to the final moment, the state. It is remarkable, however, that the transition to the state fails to mediate the primary source of particularity in civil society: the problem of poverty.¹⁵ The moment of civil society, I will argue, embodies a conceptual instability which threatens to undermine Hegel's theoretical account of the state.¹⁶

In civil society, individuals progress towards the universal standpoint through the mediation of productive work. Individuals realize their interdependence as they recognize that the achievement of their ends in an increasingly specialized economy requires complete reciprocity of effort, and thus universality of standpoint, in the satisfaction of particular needs.¹⁷

The mediation provided in civil society is only achieved when individuals in fact participate in productive work. The ordinary operations of civil society,

¹³Hegel 1991, §4 p. 35.

¹⁴Smith 1989, p. 14; see also Pippin (1981), Pelczynski (1984) and Wood (1993).

¹⁵"In the emergence of poverty, the power of particularity comes into existence in opposition to the reality of freedom" (Hegel 1991, pp. 453–4).

¹⁶Note Pinkard's (1988, p. 146) claim that, in Hegel's account of political obligation, "where the community does not live up to its own standards [for a way of life based on rational principles], the [political] obligations lessen." Avineri (1972, pp. 149–50) argues that, "[s]ince Hegel . . . was searching for a system through which man could be integrated into his world, he must have been more aware than many of his contemporaries what an exclusion from these integrative organs would entail."

¹⁷Hegel 1991, §198 p. 233.

however, necessarily generate a class of members who lack the opportunity to participate in productive work: "The emergence of poverty is in general a consequence of civil society, and on the whole it arises directly out of it . . . Poverty is a condition in civil society which is unhappy and forsaken on all sides."¹⁸ The process of infinite multiplication and specification of needs in civil society "involves an equally infinite increase in dependence and want."¹⁹

The inherent tendency of civil society to generate unemployment, and thus poverty, seriously undermines its role in the actualization of freedom, since poverty produces a disposition inconsistent with realization of the necessary universal perspective: "When a large mass of people sinks below the level of a certain standard of living . . . that feeling of right, integrity and honour which comes from supporting oneself by one's own activity and work is lost." The poor become "frivolous and lazy."²⁰ Far from realizing universality through work, the poor become more particularistic, more devoted to their individual needs for survival, and more envious of and hostile to the rich: "Because the individual's freedom has no existence, the recognition of universal freedom disappears."²¹

Thus, the problem of poverty ensures that the state will contain a class of "rabble," lacking both in honour and autonomy. The presence of rabble, however, is a contradiction of the concept of the state in which "concrete freedom requires that personal individuality and its particular interests should reach their full development."²² Their presence is a tangible manifestation of the state's failure to actualize its concept.²³

The problem is not simply that poverty *exists* in the state, but that the realization of the concept of the rational state: (i) necessarily involves the *generation* of poverty (and therefore particularity); and (ii) contains *no adequate mediation* for the particularity it produces. While Hegel recognizes that the logic of his argument requires that this obstacle be transcended in the state, he is unable to supply an adequate mediation. Thus, Avineri argues that "[p]overty is . . . not an accidental by-product of civil society; it is inherent in it."²⁴

The state's inability to mediate the problem of poverty introduces an element of instability which threatens the equilibrium of the Hegelian state. If civil society

¹⁸Hegel 1991, S244 p. 453.

¹⁹Hegel 1991, S195 p. 231.

²⁰Hegel 1991, S244 p. 266.

²¹Hegel 1991, p. 453.

²²Hegel 1991, S260 p. 282.

²³Hegel also notes that "wealth *can* lead to the same [disposition] that we find in the poor rabble." Therefore, "[t]hese two sides, poverty *and* wealth, thus constitute the corruption of civil society" (Hegel 1991, p. 454, emphasis mine). But the effect of wealth is far less certain than that of poverty: the wealthy do not necessarily sink to the disposition of rabble. When Hegel (1991 S244 p. 266) refers to a "mass of people" excluded from the mediation of civil society, he refers to the poor.

²⁴Avineri 1972, p. 146. Similarly, Wood (1990, p. 250) argues that poverty is "simply an unsolved problem for Hegel's system," a problem which may support an indictment against civil society, but "not one Hegel was inclined to draw up." Plant (1972, p. 226) argues that, for Hegel, "poverty is an endemic and ineradicable feature of modern society."

is unable to perform its educative mediation, actual freedom will not be achieved. Wood argues that this failure constitutes "a threat to . . . the fundamental aim of Hegel's theory of objective spirit."²⁵

Why does Hegel fail to provide a satisfactory solution to this central, and potentially destabilizing, problem? One answer—suggested by Avineri and M. Forster²⁶—is that Hegel simply viewed the political sphere as an imperfect medium in which to realize absolute spirit.²⁷ Thus, the failure to mediate poverty is an inevitable imperfection in an imperfect medium. This response, however, is highly unattractive: not only does the Hegelian state in this account fail to realize actual freedom for all its members, but it *necessarily* consigns many of its members to a state antithetical to freedom.

Avineri and Wood suggest that, although Hegel remained preoccupied with the problem of poverty in civil society, his political philosophy simply lacked the resources to solve this problem:

Though his theory of the state is aimed at integrating the contending interests of civil society under a common bond, on the problem of poverty he ultimately has nothing more to say than that it is one of "the most disturbing problems which agitate modern society."²⁸

I will suggest that Hegel's political philosophy contains resources adequate to resolve this problem, but that Hegel failed to exploit these resources. Hegel's failure to utilize available resources to resolve a serious threat to his philosophical goals, however, requires some explanation. I will suggest that Hegel's self-limitation is best understood as reflecting the influence of a specific set of concerns, articulated in his early political writings, regarding the status and role of the state.

I will not attempt to present an account of the views Hegel might actually have entertained had his perspective been unaffected by his particular concerns. Rather, my sketch of a Hegelian perspective on poverty is intended to provide: (i) a better understanding of the practical implications of Hegel's political theory; and (ii) an appraisal of the best Hegelian position on social intervention to combat poverty.²⁹

²⁵Wood 1993, p. 255.

²⁶Avineri 1972, p. 101. Forster 1993.

²⁷"The [national] spirit . . . absorbs within itself the finitude attaching to it as a national spirit . . . [Its self-apprehension] still has the immanent limitedness of the national spirit. But the spirit which thinks in universal history, stripping off at the same time those limitations of the several national minds . . . lays hold of concrete universality" (Hegel 1971, S552 p. 282).

²⁸Avineri 1972, p. 154; see similarly Avineri 1972, p. 109 and Wood 1993, p. 250. "Hegel gloomily remarks that [poverty] remains inherent and endemic to modern society. The very text attests to the depth of his pessimism . . . [Hegel's] intellectual honesty . . . makes him admit time and again—completely against the grain of the integrative and mediating nature of the whole of his social philosophy—that he has no solution" (Avineri 1972, pp. 153–4).

²⁹I agree completely with A. J. Simmons (1993, p. 9) regarding the proper approach to constructive interpretation: "however carefully we fill out and articulate the best version of Lockean political philosophy, that philosophy will commit us to a quite different view of our actual, contemporary lives . . . than anything Locke hoped for and expected."

II. Politics and Hegel's Philosophical System

In his early political writings, Hegel argues for strict constraints on state interventions in internal affairs. Hegel's early skepticism regarding state activism, while apparently inconsistent with his later understanding of the state's role in actualizing the freedom of its members, appears to have exerted an important influence on Hegel's mature political thought. In this section, I will examine the notion of the state developed in Hegel's early political writings and argue that this early notion influenced the account of the state presented in Hegel's later systematic philosophy.

A. The State in the Early Political Writings

As in Hegel's more systematic philosophy of the state, Hegel's analysis in the early political works is guided by his overriding concern for the realization of concrete human freedom. In these writings, however, Hegel is ambivalent about the role of the state in the actualization of freedom. Thus, in "The First Program of a System of German Idealism," written in 1796, Hegel argues that freedom requires that citizens must "transcend" the state.³⁰

Avineri argues persuasively that Hegel's political writings up to 1796 conceive of the state's authority as essentially limited to the protection of property.³¹ The state serves merely as guarantor of security in what Hegel would later term civil society.³² Rather than embodying a rational, universal perspective, such a state represents only an aggregation of individual interests. The commands of the state are thus experienced by citizens merely as external constraints. It is, therefore, not surprising that Hegel could write, in 1796, that: "every state is bound to treat men as cogs in a machine . . . hence the state must cease to be."³³

By 1802, however, Hegel had recognized the value of the state as a force promoting a universal, rather than particularistic, standpoint. Hegel argued that Germany "cannot in strictness be called a state any longer" because it no longer forms "a common military and public authority."³⁴ The rising power of factions embodying particularistic interests was, Hegel asserted, responsible for Germany's dissolute status. In particular, Hegel attributed the decline to: (i) the rise of the burgher estate, which sought to defend its interests through

³⁰Cited in Avineri (1972, p. 11). Avineri notes that the manuscript appears to be a joint product, possibly co-authored with Schelling and others.

³¹Avineri 1972, p. 11.

³²This reading is supported by passages from "The First Program of a System of German Idealism," and by the passage from *The German Constitution* in which Hegel argues that theories of centralized power presuppose that "the state is a machine with a single spring which imparts movement to all the rest of the infinite wheelwork." Such theories merely "[clothe] in the garb of rational principles . . . mean carping at any independent action by citizens" (Hegel 1964, pp. 160–1).

³³"The First Program of a System of German Idealism," cited in Avineri (1972, p. 11).

³⁴*The German Constitution*, SS16, 18, in Hegel 1964, pp. 153–4.

independent efforts rather than through support of a central public authority; and (ii) the religious division caused by the Reformation.³⁵

Hegel looked to a unifying state to stand above particular interests and promote a universal, national standpoint. In establishing institutions and norms embodying the universal, rather than particular, interests of members of society, the state would directly counteract the divisive social tendencies which Hegel believed were undermining Germany's political development.

Nevertheless, Hegel remained deeply suspicious of state intrusions on individual autonomy. In *The German Constitution*, Hegel asserts that the state must restrict its activities to what is "necessary if a multitude is to be a state." Beyond securing such needs, the state "can permit the living freedom and individual will of the citizens, and even leave considerable scope to the latter."³⁶

Thus, Hegel recognized the state's function as a unifying force, particularly in guaranteeing national defense.³⁷ But he continued to regard economic and civil regulation by the state primarily as a constraint on freedom. Hegel's preoccupation with the problems of German nationhood apparently obscured the importance of the state's role in internal affairs.

Hegel's early political views, therefore, are grounded in two basic propositions: (a) state interventions in civil affairs must be strictly limited;³⁸ and (b) state operations should be limited primarily to national security functions.³⁹

B. The State in Hegel's Systematic Philosophy

Hegel's mature account of the state is the product of his conceptual analysis of the nature of right. The science of right must "develop the *Idea*, which is present within an object out of its concept."⁴⁰ The subject of right is the preservation of a sphere of individual autonomy; therefore, the "locational point of departure" of right is the will. Since, Hegel asserts, the will is free, the system of right must be "the world of actualized freedom."⁴¹

The goal of the philosophical account is, thus, to provide a logical development of the implications of the concept of actualized freedom. The concept of the state derived from such an analysis must differ substantially from that developed in Hegel's early political thought. Since the final moment of analysis must define the conditions for the realization of actual freedom, a conception of the state sufficient for this task is required.

³⁵See Pelczynski 1964, p. 15.

³⁶Hegel 1964, p. 154.

³⁷Hegel (1964, p. 153) argues that the provision of national defense is the primary legitimate concern of the state: "A multitude of human beings can only call itself a state if it be united for the common defence of the entirety of its property."

³⁸*The German Constitution* §17, in Hegel 1964, p. 154.

³⁹*The German Constitution* §18, in Hegel 1964, p. 154.

⁴⁰Hegel 1991, S2 p. 26; S4 p. 35.

⁴¹Hegel 1991, S4 p. 35.

Hegel's systematic philosophy provides a positive account of the state's functions and potential: "it is only through being a member of the state that the individual himself has objectivity, truth, and ethical life."⁴² Nevertheless, the state's integrative role remains limited. Since the state is categorically distinct from the moments which are its preconditions, mediations of particularity occurring in particular moments are subsumed in the state, but must remain independent. For example, civil society cannot mediate poverty by "tak[ing] over the function of civil society and becom[ing] the entrepreneur," since such intervention would compromise the autonomy of civil society.⁴³

While the Hegelian state is constrained by the independence of its subsumed moments, the state, as embodied in its various moments, does possess meaningful authority to intervene.⁴⁴ Hegel discusses several significant antipoverty interventions, including income redistribution and public service employment, which remain consistent with categorical distinctness.

For reasons discussed in Section III, however, Hegel rejects the forms of direct state intervention he discusses, and assigns the mediation of poverty to weakly interventionist institutions in civil society. In civil society, the universal standpoint is attained through the joint pursuit of particularistic ends. The basic mechanism mediating particularity in civil society is non-intentional coordination among independent social actors; Hegel's understanding of the fundamental principle of civil society approximates the notion of the "invisible hand."

Hegel recognizes that non-intentional coordination will not, in itself, fully mediate the particularity present in civil society. To complement the mediations performed by coordination, Hegel redefines two ancient institutions, the police (*polizei*) and the corporation.⁴⁵ These two institutions mediate specific sources of particularity, and "help to channel the egoistic ends of members of civil society into a universal structure."⁴⁶

Hegel's alternatives, in specifying mediating institutions for civil society, are limited by civil society's specific character. Since civil society is, by definition, characterized by non-intentional coordination of civil activity, any mediating institutions must preserve this system of coordination. Even in light of this constraint, however, Hegel's institutional account of the mediation of poverty in civil society seems partial and flawed. As I will argue below, the basic mechanism of civil society fails to mediate poverty; the police are limited to administrative,

⁴²Hegel 1991, §258 p. 276.

⁴³See Avineri 1972, pp. 151–2.

⁴⁴See Hartmann 1984, pp. 132–3.

⁴⁵Hegel identified the modern police as a "degenerate" form of classical politics: "The *police* here amounts to this—*politeia*, public life and rule . . . now degraded to the whole's action to provide public security of every type." Jenaer Realphilosophie 1805–1806, cited in Riedel (1984, p. 152). The prototype of corporatism emerged in republican Rome: "[i]n essence, the corporations consisted of groups of like-minded individuals who had banded together for the furtherance . . . of certain common, limited interests" (Heiman 1971, p. 115).

⁴⁶Avineri 1970, p. 165.

regulatory and security functions; and the corporations provide mediations only to their members.

Hegel, while recognizing the need for a universalistic intervention to mediate the problem of poverty, observes an uncharacteristic self-restraint in his investigation of possible mediations. I will argue that this restraint must reflect Hegel's continuing skepticism regarding centralized social intervention; otherwise, Hegel's lack of enthusiasm in addressing a fundamental threat to his theoretical goals is inexplicable. Subsections II.B.i, ii and iii below will specify more carefully the inadequacies of the mediations of poverty provided by: (a) the mechanism of civil society; (b) the police; and (c) the corporations.

i. The Basic Mechanism of Civil Society

Hegel's distinction between civil society and the state constitutes an innovation in political philosophy.⁴⁷ A tradition tracing its roots to Aristotle's *Politics* identified the state and civil society as facets of a single phenomenon: "for public affairs (*res publica*) are the same as civil society (*societas civilis*)."⁴⁸ Hegel's innovation is to identify "civil" with social, rather than political, content. Thus, Hegel "separates the political sphere of the state from the realm of 'society' which has become 'civil'."⁴⁹ Civil society, in this context, refers to the "social position of the self-supporting citizen within the state which has become absolute politically."

Hegelian civil society is not, however, devoid of political content. Both the police and the corporations perform administrative political functions within civil society. Rather, Hegel's distinction between the state and civil society bears on the principles underlying these moments in the realization of the idea of freedom.⁵⁰

Civil society, in Hegel's account, provides a natural mechanism through which individuals achieve a universal standpoint:

The selfish end in actualization . . . establishes an all-round interdependence, so that the subsistence and welfare of the individual and his rightful existence are interwoven with the subsistence, welfare and rights of all.⁵¹

In striving to master the means to particular ends, individuals "eliminate the immediacy . . . in which spirit is immersed, so that this externality [that is, the

⁴⁷"What Hegel made the times aware of with the phrase 'civil society' was nothing less than the result of the modern revolution: the emergence of a depoliticized society through the centralization of politics in the princely or revolutionary state and the shift of society's focal point towards economics" (Riedel 1984, p. 148).

⁴⁸Jean Bodin, *De Republica*. 4th edn (1601), Book III, ch. 7, pp. 511–12; cited in Riedel 1984, p. 135.

⁴⁹See Riedel 1984, p. 139.

⁵⁰The principle underlying civil society, the principle of interdependent needs, is grounded in the nature of civil society as a network of economic relations among individuals. The principle underlying the state, the principle of the self-conscious actualization of freedom, reflects the distinct status of the state, in which freedom is in fact realized in the life of a community.

⁵¹Hegel 1991, §183 p. 221.

continuum of external necessity] may take on the rationality of *which it is capable*.”⁵²

Work serves as the mediating factor in civil society’s system of interdependent needs. The “abstraction of production” requires division of labor. The increasing specialization of work skills in production “makes the *dependence* and *reciprocity* of human beings in the satisfaction of their other needs complete and entirely necessary.”⁵³ The individual must “attain his own interest and satisfaction . . . in the process of fulfilling his duty”; through this mediation, “the universal cause becomes his *own particular cause*.”⁵⁴

The basic structure of civil society, without further mediation, approximates a universal perspective among its members. While Hegel stresses that actual freedom is only realized in the state, it is a necessary precondition of such a realization of freedom that the individual’s personality achieve full development in civil society.⁵⁵ Civil society and its system of mediation through work is a necessary ground of concrete freedom.

Thus, Hegel relies on a social mechanism, rather than a state mediation, to perform the fundamental mediation from the particular to the universal standpoint. Hegel’s reliance on such a mechanism for this fundamental mediation is remarkable, since the mechanism itself is characterized by particularity, the opposite of the universal spirit the state is to realize. In addition, since the universal standpoint is achieved through non-intentional social coordination, the commonality achieved is unconscious, and thus partial.

Hegel’s explicit rationale for reliance on mediation through the system of interdependent needs is his theoretical requirement that the state must be actual.⁵⁶ Thus, universality must be realized through the particular, subjectively grounded acts of individuals. The realization of concrete freedom requires, not the elimination of all particularity, but the identity of subjectivity and universality in which subjective drives “become the rational system of the will’s determination.”⁵⁷

Hegel recognizes, however, that his chosen mechanism for realization of the universal standpoint is flawed. Civil society necessarily entails poverty, and the poor will be excluded from the mediation of work, and thus will not achieve the universal perspective.⁵⁸

⁵²Hegel 1991, S187 p. 225.

⁵³Hegel 1991, S198 pp. 232–3.

⁵⁴Hegel 1991, S261 p. 284.

⁵⁵“Concrete freedom requires that personal individuality and its particular interests should reach their full *development* and gain *recognition of their right* for itself (within the system of the family and of civil society)” (Hegel 1991, S260 p. 282).

⁵⁶“The state is not a work of art; it exists in the world, and hence in the sphere of arbitrariness, contingency and error” (Hegel 1991, S258 p. 279).

⁵⁷Hegel 1991, S19 p. 51.

⁵⁸Hegel 1991, SS243, 244 p. 266. As Avineri (1972, p. 93) notes, this kind of analysis “undoubtedly reveals Hegel as one of the earliest radical critics of the modern industrial system.” The focus on unemployment as a phenomenon is particularly prescient.

While civil society performs a valuable mediating role, the system of interdependent needs produces certain undesirable social results, including alienation and extreme poverty. Hegel argues that two institutions of civil society, the police and the corporations, mitigate these undesirable effects.

ii. The Police

The police, or public authority, secure “external order” in civil society.⁵⁹ Hegel’s notion of securing public order is not, however, limited to the implementation of penal justice. Rather, the police must also regulate the operations of civil society in order to prevent contingent rightful actions from producing external effects which “wrong or harm other people.”⁶⁰ Thus, the police regulate markets to ensure product quality and fair business dealings.⁶¹ In addition, the police compensate for the failure of the operations of civil society to realize public goods by “provid[ing] for street-lighting, bridge-building, the pricing of daily necessities and public health.”⁶²

While the police secure the “possibility . . . for individuals to share in the universal resources,” however, Hegel concedes that the mediation provided by this institution is “incomplete—open to contingencies.”⁶³ In particular, the police are unequipped to mediate the problem of poverty, which embodies “the corruption of civil society.”⁶⁴ Hegel notes that two interventions are available to the police: income maintenance and public service employment. The first, Hegel claims, is contrary to the principle of civil society, while the second will necessarily be ineffective.⁶⁵ While I will defer until Section III evaluation of these claims, it is clear that Hegel’s account of the police does not encompass systematic interventions to mediate the problem of poverty.

iii. Corporations as Non-Political Mediation

The corporations represent the collective interests of groups sharing specific skills and economic interests. The corporations admit members “in accordance with their objective qualification of skill and rectitude,” and possess the authority to protect members against contingency and to educate nonmembers.⁶⁶ Thus, the corporations “in some respects resemble modern trade unions.”⁶⁷ The role of the corporations is distinct from that of the state, since corporations represent the particularistic interests of their constituent class, while the state acts on behalf of universal social interests.

⁵⁹Hegel 1991, S231 p. 260.

⁶⁰Hegel 1991, S232 p. 260.

⁶¹The police uphold “the public’s right not to be cheated and [inspect] market commodities” (Hegel 1991, S236 p. 262).

⁶²Hegel 1991, S236H p. 262.

⁶³Hegel 1991, S237 p. 263.

⁶⁴Hegel 1991, S244A p. 454.

⁶⁵Hegel 1991, S245 p. 267.

⁶⁶Hegel 1991, S252 pp. 270–1.

⁶⁷Hardimon 1995, p. 197.

Interventions by the corporations, however, are not grounded in the principle of civil society. Rather than requiring a strict connection between compensation and work, the corporation *guarantees* resources to its members.⁶⁸ The corporations, therefore, appear to be anomalous entities, present in civil society but providing interventions inconsistent with the principle of civil society.

One fundamental feature, however, ties the corporations to civil society. Corporations are grounded in the principle of rewarding the acquisition of skills necessary for labor. Corporate intervention on behalf of members of the corporations therefore “loses its contingent and unjustly humiliating character.”⁶⁹

The corporations perform two valuable mediating roles. First, they operate to “bring the isolated individual back into the economic, political and ethical order.”⁷⁰ As a member of the corporation, the individual gains (i) a socially recognized status (“the honour of belonging to an estate”)⁷¹; and (ii) welfare interventions including education in his trade and protection against contingencies.⁷² As groups with established social standing, the corporations appear well suited to perform the first of these mediations.

Corporate provision of welfare, however, must necessarily be contingent and incomplete. Corporations supply support only to members. Members are admitted on the basis of their “skill and rectitude.” Those in greatest need of welfare interventions are, however, least likely to possess the skills necessary for membership. And while the corporation has the right to “educate others so as to make them eligible for membership,” nothing compels the corporation to exercise this right on behalf of the disadvantaged.⁷³

The corporations thus provide only a partial mediation for a central tension of civil society. Hegel’s choice of this form of mediation offers further evidence of reluctance to propose universalistic interventions in civil affairs.

iv. Conclusion

If the state is to perform the integrative role that Hegel’s theory assigns to it, poverty generated through the mechanism of civil society must be mediated through an intervention which is universal in its scope. A mediation which is directed towards merely one, or several, groups within the state (for example, members of corporations) would be inconsistent with the state’s status as the embodiment of the universal standpoint.

The mediations of poverty provided by the mechanism of civil society and by the corporations are necessarily available only to certain members of the state,

⁶⁸Hegel 1991, S253, p. 271.

⁶⁹Hegel 1991, S253 p. 272.

⁷⁰See Heiman 1971, p. 125.

⁷¹Hegel 1991, S253 p. 272.

⁷²Hegel 1991, S252 p. 271. Corporate assistance against poverty “loses its contingent and unjustly humiliating character” because such assistance is “no more than legally fixed determinations which lie in the *particular nature* of an essential branch of society itself” (Hegel 1991, S253, p. 272; S252, p. 271).

⁷³Hegel 1991, S252 p. 271.

and are therefore particularistic. Thus, Hegel assigns the mediation of poverty to institutions which have the merit of being grounded in the principle of rewarding the acquisition of skills, and the demerit of being inadequate, according to Hegel's own standard. Yet the failure to identify an adequate mediation of poverty constitutes a threat to Hegel's entire philosophical account of the state.

Hegel's restraint in addressing such a serious threat to his philosophical goals suggests either that Hegel: (i) failed to recognize the seriousness of the problem; or (ii) believed that higher-order considerations constrained the options available to address the problem. Hegel's texts offer persuasive evidence that Hegel did, in fact, recognize the full significance of poverty in his account of civil society. For example, Hegel writes that, for the poor man, "the existence of freedom becomes something wholly contingent." Thus, "[b]ecause the individual's freedom has no existence, the recognition of universal freedom disappears." Poverty constitutes "the corruption of civil society."⁷⁴

Since Hegel appears to have recognized the significance of poverty for his account of the state, it seems most plausible to assume that Hegel's consideration of this issue was constrained by higher-order considerations. Skepticism regarding state interventions in civil society rises to the level of a higher-order principle in Hegel's early political thought. Moreover, Avineri and Pelczynski argue for a "remarkable continuity"⁷⁵ between the themes and ideas of Hegel's early and mature political writings. Persisting skepticism regarding the role of the state would explain Hegel's willingness to: (i) reject state interventions; and (ii) assign necessary interventions to institutions which are unequipped to provide a universalistic mediation.

Thus, in light of the fit between Hegel's early skepticism regarding state intervention and his later reluctance to specify state interventions to address a "threat to the fundamental aim of [his] theory of objective spirit,"⁷⁶ I suggest that Hegel's tentativeness in addressing the problem of poverty derives from his pre-existing skepticism regarding state interventions in civil affairs.

I will argue in Section IV that universalistic interventions are, in fact, feasible within the constraints imposed by Hegel's account of the state. It is important, however, to note the limited scope of this argument. I will not argue that the Hegelian state must eliminate poverty. Rather, my more plausible claim is that Hegel requires a mediation which is non-particularistic. That is, the mediation must be designed to apply equally to the needs of all members of the state who are poor.

⁷⁴Hegel 1991, S244 p. 454.

⁷⁵"[M]ost of [the *Philosophy of Right's*] themes and ideas go back to Hegel's thought during the Jena period" (Avineri 1972, p. 87). "The basic themes of the political writings recur in the philosophical works . . . sometimes almost verbatim, and greatly reinforce the outline of Hegel's political thought developed in [Pelczynski's discussion of the early political works]" (Pelczynski 1964, p. 113).

⁷⁶Wood 1993, p. 255.

III. The Argument for Constructive Interpretation

Serious consideration of Hegelian theory requires that we attempt to identify the most general theoretical implications of Hegel's work. In this section, I will argue that serious consideration of Hegel's theory of the state requires constructive interpretation to isolate what is strongest and most general in Hegel's account. In particular, I will argue that: (i) Hegel's theoretical commitments ground an unconditional requirement to mediate poverty, while Hegel's rationale for rejecting antipoverty interventions is merely conditional; and (ii) Hegel does not appeal to this rationale, even as a conditional objection, when evaluating other forms of state intervention.

A. Merely Conditional Rejection of State Interventions

If: (i) the realization of the state unconditionally requires the mediation of particularity;⁷⁷ and (ii) the penultimate moment of the state necessarily *generates* poverty⁷⁸ (and thus particularity), as argued above; then (iii) the Hegelian state is unconditionally required to intervene to mediate the problems of poverty and its particularizing influence.

Hegel considers and rejects two forms of intervention to mediate poverty: (i) opportunities to work provided by the society ("public service employment"); and (ii) income support. In each case, I will argue that Hegel's argument to reject the intervention is conditional, grounding a rejection of the intervention *only* in a state of affairs in which the specific premises of Hegel's conditional argument hold.

First, Hegel rejects mediation of poverty through public service employment. I have argued that Hegel's mature account *requires* that the state mediate poverty. In addition, Hegel argues that state efforts to reduce poverty must be "mediated by work."⁷⁹ Public service employment constitutes the most precise way of mediating poverty through work. Therefore, Hegel's reason for rejecting this intervention must be of sufficient weight to counterbalance a *requirement* of his philosophical account.

Hegel relies on the following reasoning in rejecting public service employment: (i) public service employment would "increase the volume of production"; (ii) since "it is precisely in overproduction . . . that the evil [poverty] consists," public service employment would be counter-productive.⁸⁰ Public service employment will in fact *depress* a weak economy, Hegel argues, since the intervention will increase production without increasing consumption. While

⁷⁷Hegel 1991, S260 p. 282; S24 p. 54.

⁷⁸See Hegel 1991, p. 453.

⁷⁹Hegel 1991, S245 p. 267.

⁸⁰*ibid.*

Hegel appears to concede that the intervention is necessary under his analysis, he argues that the laws of economics make the intervention impractical.

Hegel's argument does provide a plausible basis for rejecting public service employment. At best, however, this argument justifies a conditional conclusion: *if* public service employment will, in fact, be ineffective in the manner claimed, *then* this form of mediation should not be chosen.

It is important to note that the requirement that poverty be mediated (through productive work) is unconditional: freedom (i) must be actualized; and (ii) cannot be actualized unless poverty is mediated in the appropriate manner. No set of empirical facts about the state of the world will alter this theoretical requirement. Hegel's conditional argument for rejecting this mediation, however, provides a persuasive basis for action only in a world in which its premises hold. Thus, within Hegel's analytic framework, only a qualified conclusion is warranted, not the categorical conclusion which Hegel believes he has justified.

Hegel's failure to provide an unconditional argument for rejecting public service employment is significant because: (i) the state *must* mediate poverty (through productive work) in order to realize actual freedom; and (ii) Hegel is unable to supply an adequate alternative mediation. Since such a mediation is *necessary*, one would expect Hegel to place the burden of persuasion on the argument against the mediation; that is, a necessary mediation should enjoy a presumption in its favor. At a minimum, the premises of an argument to reject a necessary intervention must be subject to careful scrutiny.

In particular, such premises must be re-evaluated as new information becomes available. While economic theory of the eighteenth century supported Hegel's argument rejecting public service employment, much of modern economic theory would reject Hegel's assumption that increased production will not stimulate increased consumption.⁸¹ Thus, Hegel's argument is no longer plausibly grounded in economic theory.

Hegel's rationale for rejecting public service employment is therefore undermined as an element of his political philosophy retaining contemporary relevance. Since, under the dominant assumptions of contemporary macroeconomic theory, public service employment constitutes the most precise mediation of poverty through productive work, this intervention would appear to be the appropriate Hegelian mediation of (certain aspects of) poverty.

Second, Hegel argues that if the wealthy were taxed to support the poor, the connection between work and realization of ends (the basis of the mediation of civil society) would be eliminated: "this would be contrary to the principle of civil society."⁸² Here, Hegel's argument may be inconsistent with other

⁸¹Contemporary macroeconomic analysis, generally, holds that intended real consumption varies directly with changes in real disposable income. Increased employment leads to increases in real income, and thus to increased consumption. See, e.g., Sargent (1987, pp. 17–18, 363–6) and Barro (1990, p. 516).

⁸²Hegel 1991, §245 p. 267.

arguments for intervention in economic/civil affairs in the *Philosophy of Right*. I will develop this claim in Section III.B, below.

It is important to note, however, that Hegel may pose his alternatives too starkly. If public service employment is considered an acceptable option, then a mediation of poverty involving a range of alternatives becomes possible. Mediation of poverty could include jobs for the employable, support for the disabled and training for those without marketable skills. This type of solution would preserve the link between work and the realization of ends, since only those unable to work would be provided with income support.

B. Inconsistent Criterion in Evaluating Social Interventions

Hegel argues that the provision of income support to the poor would violate the principle of civil society, since the relationship between work and realization of ends would be attenuated.⁸³ Yet Hegel is not consistent in applying this principle as a criterion in evaluating state interventions throughout the *Philosophy of Right*. Thus, in two instances Hegel justifies intervention on less principled grounds.

First, Hegel justifies intervention to provide for the proper education of children on the following grounds: "Civil society has the duty and right, in the face of *arbitrariness* and contingency on the part of parents, to supervise . . . the *education* of the children in so far as this has a bearing on their capacity to become members of society."⁸⁴ Hegel bases his claim for a right of intervention on the argument that an arbitrary agency will otherwise thwart the development of the universalistic element in the minds of a victim not fully competent to protect herself. This argument is persuasive, but an analogous argument can easily be made for intervention against poverty: the poor are unable to help themselves and, without intervention, the action of arbitrary economic agencies will thwart the development of the universalistic element in their minds.

Similarly, Hegel justifies the provision of support by corporations to their members on the grounds that the contingency inherent in generalized provision is not present, since the needs of the assisted "lie in the *particular nature* of an essential branch of society."⁸⁵ Yet the needs of the poor also reflect the "particular nature" of an essential branch of society.

C. Conclusion

Hegel's primary concern, the link between work and reward, may appear to him less problematic in the cases of corporate provision and the education of children than in the case of generalized public support. Membership in the corporation is

⁸³ibid.

⁸⁴Hegel 1991, S239 p. 264.

⁸⁵Hegel 1991, S252 p. 271.

grounded in skill and competence to work, so that the unemployment of a member may be presumed to be involuntary. Children are not expected to work, and skills acquired in education will enhance their future employment opportunities.

Hegel's concerns regarding the relation to be maintained between work and compensation can, however, also be addressed in the context of interventions to combat poverty. If, as argued above, the option of public service employment remains available to the state, then an intervention can be devised providing jobs to the employable and support to the disabled. Thus, if Hegel's primary concern in restricting state mediations of poverty is to protect the work/compensation relation, then the proposed constructive reinterpretation is consistent with this concern.

I have argued that state intervention to mediate poverty is consistent with, and even required by, a careful understanding of Hegel's account of the state. In the next section, I will examine the implications of a Hegelian theory of the state for an account of the state's authority to intervene to combat poverty.

IV. Hegel and the Mediation of Poverty

In order to preserve the structure of Hegel's argument, a proposed mediation of poverty should be consistent with the principle of actualization operative in the moment of the state in which it is to be introduced. In this section, I will examine (i) the principles underlying the mediation of work occurring in civil society; and (ii) implications of these principles for Hegel's account of social intervention.

It could be objected that such an inquiry is inconsistent with the spirit of Hegel's analysis, which constitutes an account of the nature of right, and not a blueprint for policy. While it is true that the *Philosophy of Right* can hardly be viewed as a work of policy analysis, Hegel is engaged in providing an account of the *rational* idea of the state. A normative element is implicit in this task: some elements (conceptual or empirical) will be endorsed as rational, others will be rejected. Hegel considers whether various institutional features would be appropriately incorporated within the idea of a fully realized rational state.

My analysis disputes Hegel's *conclusions* relating to institutions designed to address the problem of poverty. My *analytic approach*, however, follows Hegel's closely. I evaluate potential institutions from the perspective of the idea of the state: I attempt to determine what the realization of the concept of the state requires.

A. The Principle of Civil Society

Hegel provides an explicit account of the mediation through which universality is achieved in civil society. First, the understanding multiplies and refines the needs

of individuals, and the means necessary for their attainment.⁸⁶ Second, these needs and means mediate the relations between individuals. The satisfaction of the needs of each is “mutually conditioned” on the work of the others: “the fact that I have to fit in with other people brings the form of universality into play at this point.”⁸⁷

The universality acquired through this mediation, however, is merely formal, since “the particularity of ends remains the basic content.”⁸⁸ Thus, an additional mediation is required: practical education through work. The universal perspective is realized as the division of labor required to satisfy increasingly refined individual needs makes social interdependence complete.⁸⁹ Only those experiencing practical education through participation in work benefit from this mediation.

While those who work experience the identity of duty and right required for universality, nonworkers claim the right to support, but submit to no corresponding duty to contribute to general social welfare. Instead of achieving the universalistic standpoint of interdependence, nonworking members of society experience the particularistic standpoint of dependence.

Because of the centrality of work in the mediation provided in civil society, it is natural that Hegel rejects public provision of income as a solution to the problem of poverty.⁹⁰ Income relief would undermine the “self-sufficiency and honour” of recipients, thus negating the principle of practical education through work. In fact, Hegel anticipates the concern, central in contemporary welfare policy debates, that the provision of public assistance may undermine self-sufficiency and self-esteem.⁹¹

Hegel’s rejection of income relief as a mediation is problematic, however, because: (i) the logic of Hegel’s argument requires that the state mediate poverty in order to actualize freedom; and (ii) under certain circumstances, direct provision of income may be the only appropriate mediation. In particular, an intervention which provides employment opportunities may not be appropriate to mediate the poverty of the seriously disabled and single parents of young children.

Nevertheless, Hegel maintains that income supplementation would be a counterproductive mediation. Hegel’s argument is grounded in the premise that the proposed intervention would discourage work, and thus undermine the principle of civil society. As in his argument rejecting public service employment, Hegel provides only a conditional argument for the rejection of a form of mediation which appears to be unconditionally required in some cases. Such a conditional argument will provide a reason to reject the intervention, however, only if its premises are valid.

⁸⁶Hegel 1991, S190–1 pp. 228–9.

⁸⁷Hegel 1991, S192 pp. 229–30.

⁸⁸Hegel 1991, S195 p. 231.

⁸⁹Hegel 1991, S198 pp. 232, 233.

⁹⁰Hegel 1991, S245 p. 267.

⁹¹“[T]he heart of the poverty problem in 1987 is . . . the problem of behavioral dependency.” In Working Seminar on the Family and American Welfare Policy, American Enterprise Institute, 1987; cited in Ellwood 1989.

Income relief is an inappropriate mediation if, and to the extent that, it undermines the self-sufficiency of aid recipients. Hegel cannot argue that income relief unacceptably undermines self-sufficiency in all instances, since he argues *for* the provision of income relief by the corporations.⁹² Hegel must, therefore, believe that: (i) income relief does not discourage work in *all* cases; or (ii) the benefit produced in some cases so far exceeds the detrimental effect that the intervention is justified. Thus, if income supplements provided by the corporations do have some work disincentive effect, the disincentive must constitute a cost to be weighed against benefits in assessing the intervention, rather than a sufficient reason for abandoning the intervention.

In any case, Hegel's argument in favor of income supplementation in *some* cases means that there exists a range of cases in which such relief will be acceptable, either because the intervention produces no disincentive under the circumstances, or because the detriment is outweighed by the benefit realized.

Once Hegel has conceded that income relief does not *necessarily* undermine self-sufficiency in an unacceptable manner, Hegel's argument no longer requires an absolute rejection of this form of intervention. Rather, Hegel's argument will require such a rejection when, and to the extent that, such income relief unacceptably undermines self-sufficiency. In particular, in circumstances in which income relief is *required*⁹³ to mediate poverty, such relief should be rejected only when there exists good reason to believe that the mediation will, in fact, significantly undermine self-sufficiency.

This qualification of Hegel's argument has two substantive implications. First, the appropriateness of income relief is, to some extent, a question of empirical fact: social science data measuring work-disincentive effects will be relevant to our judgment regarding whether income relief is an appropriate (Hegelian) intervention.⁹⁴ Second, income relief may remain appropriate as a component of an (Hegelian) antipoverty strategy which provides support only to those unable to work: a mediation cannot discourage work among those who cannot work in any case.

B. Hegel and Antipoverty Intervention

A Hegelian mediation of poverty must relieve poverty without undermining self-sufficiency. Optimally, the intervention should mediate poverty directly through work. Since certain forms of poverty cannot be mediated through work, an acceptable mediation must, at a minimum, not undermine self-sufficiency. In this

⁹²Hegel 1991, SS 252, 253 pp. 270–2.

⁹³That is, circumstances in which the poverty of individuals must be mediated to avoid particularity, but this mediation cannot be achieved through the enhancement of their employability.

⁹⁴Goodwin, for example, presents empirical data suggesting that public assistance plays only a marginal role in creating work disincentives. See Goodwin 1972.

section, I will examine the implications of Hegel's philosophical account of the state for mediation of the problem of poverty.

I have argued that Hegel's account of actual freedom is, in fact, consistent with two interventions which Hegel rejects: (i) public service employment; and (ii) public support (under some circumstances). Several other forms of intervention clearly promote productive work, and thus seem to satisfy Hegel's constraints on appropriate mediations: (i) remedial education; (ii) job training; and (iii) subsidized employment.

Although Hegel's explicit argument does not recognize the potential role of the state in mediating poverty, the logic underlying Hegel's account of actual freedom provides a basis for structuring the preferences of the policy-maker. The importance of productive work in Hegel's account of freedom determines the policy-maker's preference ordering among strategies for intervention. Interventions which promote work will be preferred to interventions which supplement income. Since Hegel argued for preserving the autonomy of civil society, interventions facilitating the operations of the free market will be preferred to state activism. Thus, education and training policies will be preferred to public service or subsidized employment, and all employment-oriented strategies will be preferred to public assistance. State-subsidized community interventions which attempt to integrate the disadvantaged into the labor force would seem to be (i) analogous to employment training interventions, and therefore (ii) a preferred strategy. To the extent that such programs make possible an *independent* community of the poor, existing within the larger community, however, such programs would be problematic under Hegel's criterion. The creation of an independent community within the larger community would seem to constitute a new source of particularity, and thus to undermine, rather than promote, the realization of substantial ethical life.

These conclusions, however, must necessarily be qualified by consideration of the relevant context in which the policy is to be implemented. For example, in the United States, several forms of subsidized employment have consistently proved more effective than training in linking disadvantaged to the work force.⁹⁵ If subsidized employment constitutes the most effective approach to implementing the mediation of work, then subsidized employment must be the preferred intervention. Moreover, both training programs and subsidized work may be ineffective in linking the disadvantaged to the work force in the slack labor markets of contemporary industrialized nations.⁹⁶ If these less invasive interventions are ineffective, public service employment or other methods of job creation may be essential to realizing the necessary mediation.

⁹⁵Bassi and Ashenfelter 1986.

⁹⁶See Weir 1992.

The interventions listed above are in no sense novel. Nor is the notion that employment-oriented interventions should be preferred to public assistance. In what sense, then, does Hegel's account supplement liberal theory?

Hegel's account provides two valuable insights to reorient our understanding of the value and necessity of antipoverty intervention. Hegel's first insight is foundational, and concerns the fundamental commitments of liberalism. Hegel claims that individual ends, and thus individual conceptions of the good, are only intelligible within the context of interdependent human activity.⁹⁷ Moreover, substantial ethical life within such human interdependent activity, and thus freedom, can only be constituted by members who have achieved a universal standpoint. Hegel's argument suggests, therefore, that a commitment to freedom entails a commitment to the realization of a certain level of consciousness in the members of the community.

Much of modern liberal theory focuses on the state's role as guarantor of the agent's abstract right, as an individual, to pursue her conception of the good.⁹⁸ Hegel's argument suggests that a single-minded focus on assuring the necessary conditions for the exercise of freedom may represent an overly narrow conception of the purposes of liberal institutions.⁹⁹

Hegel's second insight is practical, and concerns the possibility of implementing his conception of the actualization of freedom. Hegel anticipates the modern notion of state-dependent preferences, preferences whose content is shaped by the context in which they are formed.¹⁰⁰ If the individual's preferences are significantly influenced by context, then respect for the individual's unmediated conception of the good may not always be in the individual's interest. For example, if poverty tends to lower the aspirations of the poor, then respect for these lowered aspirations may not provide the best basis for social policy. This insight helps to explain why income assistance, which provides recipients with the greatest immediate latitude to pursue their preferences, may nevertheless constitute an inadequate mediation of poverty. In order to actualize freedom, it must be possible to constitute norms and institutions to realize the universal standpoint in members whose preferences are state dependent. State dependence of preferences thus defines the practical problem to be solved in realizing substantial ethical life.

Hegel's notion of substantial ethical life is almost uniquely well equipped to address this practical problem. Substantial ethical life is merely the ethical life constituted by members of a certain form of community in a particular context. Since context is intrinsic to the substance of ethical life, the influence of context should be naturally incorporated within ethical life. If members of the community fail to achieve a universal standpoint, however, the influence of

⁹⁷This is necessarily true, since language, by its nature, exists only as a shared medium: "language expresses [the universal content] alone" (Hegel 1979, p. 60). See Hegel 1979, pp. 75–6, 111, 290–1.

⁹⁸See Rawls 1971; Dworkin 1978.

⁹⁹See Pippin 1993, pp. 69, 74.

¹⁰⁰Hegel 1991, S187 p. 225; S261 p. 284. See Elster 1983.

context on these members will be expressed as particularity which threatens the stability of ethical life. The solution, which arises naturally from Hegel's theory, is to assist these members to achieve a universal standpoint through the mediation of productive work. Once this mediation has been accomplished, the influence of context is again benign.

These two intuitions ground Hegel's concern with mediation through productive work. Only individuals who achieve a universal standpoint are capable of jointly constituting substantial ethical life. Only individuals who experience the mediation of productive work will reliably achieve the universal standpoint. Only in achieving this standpoint does the individual achieve the ability to shape the social context which, in turn, shapes him:

Individuals, as citizens of this state, are *private persons* who have their own interest as their end. Since this end is mediated through the universal . . . they can attain their end only in so far as they themselves determine their knowledge, volition and action in a universal way and make themselves *links* in the chain of this *continuum*.¹⁰¹

Participation in civil society is intrinsically interdependent: "I acquire my means of satisfaction from others . . . [and] am compelled to produce means whereby others are satisfied."¹⁰² A successful participant in civil society is, necessarily, a producer as well as a consumer.

This feature of participation helps to explain the importance of productive work in Hegel's account. The individual cannot achieve actual freedom unless she jointly constitutes the ethical substance of the society in which she is situated; and she cannot participate in this way unless she can be a producer (that is, can participate in productive work). Participation in productive work takes on the character of a precondition of autonomy. The significance of work in Hegel's political thought reflects the fundamental importance of work in Hegelian phenomenology: "it is precisely in his work . . . that [consciousness] acquires a mind of his own."¹⁰³ Thus, if an antipoverty intervention provides income without employment to employable individuals, the policy will preserve, rather than mediate, particularity.

V. Conclusion

Hegel's mature account of the state requires that concrete freedom is actually realized in the state. The particularities of civil society must be mediated before freedom can be realized. Poverty, in particular, constitutes an important source of particularity in civil society.

In the *Philosophy of Right*, Hegel's skeptical view of social welfare interventions is grounded in concerns regarding individual self-sufficiency and

¹⁰¹Hegel 1991, §187 p. 224.

¹⁰²Hegel 1991, §192 p. 230.

¹⁰³Hegel 1979, p. 119.

“honor.” In order to remain consistent with Hegel’s political thought, a social welfare intervention must therefore encourage self-sufficiency and discourage dependency.

It is in this respect, in fact, that Hegel’s analysis can supplement liberal values. Liberal theory has traditionally stressed the importance of rights in securing individual freedom. Hegel’s argument suggests that the guarantee of formal rights will never be sufficient, in itself, to secure individual freedom.

Individuals will only achieve freedom within the state if they achieve the *status* of full participants in the affairs of the community. Hegel argues persuasively that participation in productive work is a necessary condition of the attainment of such a status. Therefore, if individuals are to achieve freedom in the state, the state must, to the maximum degree possible, guarantee access to productive work.

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Hegel and Liberalism

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In this article, the venerable but still not entirely resolved issue of Hegel's relationship to liberalism is discussed. In contradistinction to recent communitarian accounts, the Kantian and Enlightenment idea of rational freedom in Hegel's political philosophy is shown to be the basis for Hegel's critique of traditional liberalism. While the Hegelian state incorporates most of the rights and freedoms ordinarily associated with liberalism, Hegel's rationale for these rights and freedoms is never the traditional liberal one. In conclusion, the relevance of Hegel's ideal of the rational state to our understanding of contemporary liberalism and its discontents is assessed.

Introduction

The issue of Hegel's relationship to liberalism is an old and still not entirely resolved one. What might be called the first wave in the scholarly debate over this issue began with Rudolf Haym's influential charge, in his 1857 *Hegel und seine Zeit*, that Hegel's political philosophy was fundamentally antiliberal and represented nothing more than a scientific apology for the reactionary Prussian state of 1821.¹ This charge to a large extent stuck throughout the rest of the nineteenth century; and it was amplified in the twentieth—and adumbrated in terms of contemporary fascism and totalitarianism—by such writers as E. F. Carrith and, most famously, Karl Popper.²

Throughout the twentieth century, however, there has been a steadily growing number of scholars who have dissented from this image of Hegel as an antiliberal defender of Prussianism and as a proto-totalitarian. Their arguments have been twofold. First, drawing largely on historical and biographical evidence, they have shown that Hegel's political views were not particularly conser-

1. See Rudolf Haym, *Hegel und seine Zeit* (Berlin: Rudolf Gaertner, 1857), pp. 357–91.

2. See E. F. Carrith's contributions in *Hegel's Political Philosophy*, ed. Walter Kaufmann (New York: Atherton, 1970); Karl Popper, *The Open Society and its Enemies* (London: Routledge & Kegan Paul, 1962), vol. 2, chap. 12. See also Sidney Hook's contributions in *Hegel's Political Philosophy*.

vative in his time but, rather, of a moderately liberal or progressive character, in line with the reforms of vom Stein, Hardenberg, and Humboldt. Second, based mainly on a philosophical analysis of the *Philosophy of Right*, they have argued that Hegel's political philosophy actually incorporates a number of liberal elements and is for the most part consistent with the principles of the modern constitutional state.³

The results from this first wave of controversy over Hegel's relationship to liberalism are now largely in, and Hegel's liberal defenders have for the most part been victorious. As Allen Wood confidently puts it: "there is now a virtual consensus among knowledgeable scholars that the earlier images of Hegel, as philosopher of the reactionary Prussian restoration and forerunner of modern totalitarianism, are simply wrong, whether they are viewed as accounts of Hegel's attitude toward Prussian politics or as broader philosophical interpretations of his theory of the state."⁴ But the resolution of this first wave of controversy has not put the issue of Hegel's relationship to liberalism completely to rest. It has only given way to a second wave of scholarship in which Hegel's relationship to liberalism is more subtly discussed in terms of the contemporary liberal-communitarian debate. Here Hegel is no longer viewed as an antiliberal statist or totalitarian but more positively as a thoughtful communitarian critic of liberalism.

3. Among others, see Bernard Bosanquet, *The Philosophical Theory of the State* (London: Macmillan, 1951), pp. 229–74; contributions by T. M. Knox, Shlomo Avineri, Z. A. Pelczynski, and W. Kaufmann, in *Hegel's Political Philosophy*; Pelczynski's "Introductory Essay," in *Hegel's Political Writings*, trans. Knox (Oxford: Clarendon Press, 1964); Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972); Joachim Ritter, *Hegel and the French Revolution*, trans. R. D. Winfield (Cambridge, MA: MIT Press, 1982); Jacques d'Hondt, *Hegel and His Time: Berlin, 1818–31*, trans. J. Burbidge (Lewiston, NY: Broadview Press, 1988); K.-H. Ilting's introductions to vols. 1 and 4 of Hegel's *Vorlesungen über Rechtsphilosophie, 1818–31*, ed. Ilting (Stuttgart: Frommann, 1973); Adriaan Perperzak, *Philosophy and Politics: A Commentary on the Preface to Hegel's Philosophy of Right* (Dordrecht: Martinus Nijhoff, 1987), pp. 15–31.

4. Allen Wood, "Editor's Introduction" to *Hegel's Elements of the Philosophy of Right*, ed. Wood (Cambridge: Cambridge University Press, 1991), pp. ix; see also xxxi n.10. But for a recent dredging up of the old charge that Hegel is a reactionary defender of the Prussian state, see Paul Hirst, "Endism," *London Review of Books*, 23 November 1989, quoted in Francis Fukuyama, *The End of History and the Last Man* (New York: The Free Press, 1992), p. 349n.14. Even Alan Ryan portrays Hegel as being "illiberal" in his review of Fukuyama's book; see "Professor Hegel Goes to Washington," *The New York Review Books*, 26 March 1992, pp. 8, 10.

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The *locus classicus* of this communitarian interpretation of Hegel's political philosophy remains Charles Taylor's *Hegel*.⁵ There and elsewhere Taylor argues that Hegel provides a penetrating critique of some of the key assumptions, deriving from the Enlightenment, of traditional (and much contemporary) liberal doctrine—for example, its atomistic conception of the self, its negative conception of liberty, its supposed neutrality with respect to the human good, and so forth. By liberating itself from the atomistic prejudices of traditional liberal doctrine and recognizing the primacy of community or *Sittlichkeit*, Taylor argues, Hegel's political philosophy represents an important alternative to current utilitarian and Kant-inspired versions of liberalism.

There is much to recommend in Taylor's communitarian reading of Hegel. It certainly represents a vast improvement over the early interpretations of Hegel as a reactionary or totalitarian theorist. And it even represents an improvement over the conventional liberal interpretations of Hegel's political philosophy which, in trying to defend Hegel from the charge of reactionary statism or totalitarianism, tended to drain Hegel's political philosophy of its radical implications by focusing on his conventional political opinions instead of on his more original philosophical reasons. Nevertheless, Taylor's communitarian interpretation of Hegel's political philosophy ultimately fails, in my view, by understating Hegel's link to Enlightenment modernity, especially in its Kantian guise, and by exaggerating Hegel's affiliation with certain romantic themes such as organic unity, wholeness, overcoming alienation, and so forth. Taylor adopts Isaiah Berlin's term "expressivism" to refer this latter set of romantic themes in Hegel's philosophy. And while he certainly does not ignore the role of the Kantian and Enlightenment idea of rational autonomy in Hegel's outlook, he ultimately sees it as having to be supplemented by the very different, romantic idea of "expressive" unity. Hegel's political philosophy thus becomes a "synthesis" of the twin aspirations to rational autonomy and expressive unity, on Taylor's view.⁶ But such a "synthesis" looks

5. Charles Taylor, *Hegel* (Cambridge: Cambridge University Press, 1975). See also Taylor's abridgement of this book, *Hegel and Modern Society* (Cambridge: Cambridge University Press, 1979), in which the communitarian themes emerge even more distinctly.

6. See Taylor, *Hegel and the Modern Spirit*, pp. 1–14.

more like a theoretically unsatisfying compromise; and it ultimately blurs the absolutely central significance of the idea of rational autonomy in Hegel's thought.⁷

A similar difficulty afflicts Steven Smith's more recent treatment of the issue of Hegel's relationship to liberalism.⁸ Smith situates his interpretation of Hegel's political philosophy explicitly in terms of the contemporary liberal-communitarian debate. He tells us that his interest in Hegel grew out of a dissatisfaction with current neutralist or rights-based—"deontological"—accounts of liberalism. On the other hand, he wishes to distance Hegel from some of the antiliberal and relativistic implications of contemporary communitarianism. For Smith, Hegel provides us with a "middle ground" between deontological liberalism and contemporary communitarianism. "Like the modern communitarians, he is critical of the individualistic and ahistorical conceptions of rights underlying the liberal polity, but like many liberals in both his day and ours, he is skeptical of any attempt to return to some form of democratic participatory *gemeinschaft* based upon immediate face-to-face relations."⁹

Again, as with Taylor, there is much to recommend in Smith's interpretation of Hegel. In many respects it marks an improvement over Taylor's communitarian reading of Hegel in that it more clearly brings out Hegel's substantial affinities with the liberal tradition and distances him from some of the romantic and relativistic excesses of contemporary communitarianism—though in fairness to Taylor it should be said that he does not reduce Hegel to a simple antiliberal.¹⁰ Nevertheless, Smith's interpretation shares with Taylor's the defect that it makes Hegel's political philosophy

7. In *Patterns of Morality* (Cambridge: Cambridge University Press, 1987), 99–107, Charles Larmore interprets Hegel in an even more communitarian direction than Taylor, albeit with a critical intention. He criticizes Taylor for allowing that the idea of rational autonomy plays any significant role in Hegel's political philosophy and for thus underplaying "the extent to which Hegel rejected the ideal of autonomy" (168n.14).

8. Steven B. Smith, *Hegel's Critique of Liberalism: Rights in Context* (Chicago: University of Chicago Press, 1989).

9. *Ibid.*, p. 6.

10. Taylor has made it increasingly clear that communitarianism is not necessarily antithetical to liberal politics; "ontological issues" must not be confused

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into too much of compromise between two extremes—in this case, between modern individualistic liberalism and communitarianism. The terms of the liberal–communitarian debate are largely accepted unchanged, and Hegel is simply seen as coming down somewhere in between the two alternatives, partaking of the virtues of each without suffering from the corresponding defects. What Smith fails to grasp here is the way in which Hegel’s political philosophy does not simply split the difference between contemporary liberalism and communitarianism but in many respects completely transcends the terms of the debate between them. Also, like Taylor, he does not sufficiently appreciate the centrality of the Enlightenment idea of rational autonomy to Hegel’s political philosophy, ultimately conceding too much to the romantic critique of the “divided self” and the communitarian vision of the state as a “locus of shared understandings.”¹¹

The interpretation of Hegel’s relationship to liberalism which follows in many ways picks up from Smith’s but attempts to move Hegel a little closer to, if not the liberal, at least the Enlightenment and rationalist end of the political–philosophical spectrum, away from the romantic or communitarian end. Central to this interpretation is the Enlightenment idea of rational autonomy, rational freedom, which Hegel takes over from Kant and also Fichte. It will be my contention that Hegel’s political philosophy is best seen as an extension and modification of the Kantian–Fichtean idea of rational freedom, not as an attempt to synthesize or balance this idea with an alternative romantic ideal of organic wholeness or communal solidarity.¹²

with “advocacy issues.” See his “Cross-Purposes: The Liberal–Communitarian Debate,” in *Liberalism and the Moral Life*, ed. Nancy Rosenblum (Cambridge: Cambridge University Press, 1989), pp. 159–82.

11. Smith, *Hegel’s Critique of Liberalism*, p. 233.

12. The interpretation with which mine bears the closest affinity is that of Allen Wood, *Hegel’s Ethical Thought* (Cambridge: Cambridge University Press, 1990). It also shares a great deal with the general view of Hegel that Robert Pippin has elaborated in a number of writings, beginning with *Hegel’s Idealism: The Satisfactions of Self-Consciousness* (Cambridge: Cambridge University Press, 1989); see especially his suggestive remarks on Hegel’s relation to the Kantian and Enlightenment idea of autonomy in *Modernism as a Philosophical Problem: On the Dissatisfactions of European High Culture* (Oxford: Basil Blackwell, 1991), pp. 8–15, 46–79.

What does this mean for Hegel's relationship to liberalism? It does not mean that Hegel is in any way a liberal in the classic or early modern sense. Indeed, as we shall see in the ensuing section, Hegel's political philosophy constitutes a fairly radical critique of the theoretical—largely individualistic—foundations of traditional liberalism. It is true, as almost all of Hegel's liberal defenders have pointed out, that the Hegelian state incorporates a good many of the rights and freedoms we ordinarily associate with liberalism. But the crucial point is that Hegel's rationale for these freedoms is never the traditional liberal one. Allen Wood captures the relationship between Hegel's largely liberal politics and his nonliberal philosophical justification of them nicely when he says that, while "Hegel's political ideas leave the liberals' state pretty much intact," his ethical theory "shreds the liberal rationale for it."¹³

After examining Hegel's critique of the theoretical foundations of traditional liberalism, I move on in the next section to consider the exact relationship between the Hegelian state and the freedoms and individuality we ordinarily associate with liberalism. Finally, in my conclusion, I take up the more speculative question of the relevance of Hegel's political philosophy to our thinking about liberalism today. Formulated in terms of the general theme of a recent American Political Science Association meeting, of what use is Hegel's political philosophy to the understanding and/or defense of liberalism now "at century's end?"

Hegel's Critique of Liberal Individualism

Before we begin to examine Hegel's critique of liberalism, we need to have some idea of what is generally meant by liberalism. Here I mean to be brief and uncomplex. I will simply assert that liberalism, at least traditionally understood, is a political doctrine concerned primarily with securing the life, liberty, and property

13. Wood, *Hegel's Ethical Thought*, p. 258. K.-H. Ilting, "The Structure of Hegel's *Philosophy of Right*," in *Hegel's Political Philosophy: Problems and Perspectives*, ed. Z. A. Pelczynski (Cambridge: Cambridge University Press, 1971), takes a similar position with respect to Hegel's relationship to liberalism, pointing out that, while Hegel's political philosophy incorporates a number of liberal principles, it ultimately rejects the theoretical foundations of liberalism. Ilting, however, ends up exaggerating Hegel's theoretical affinities with ancient political philosophy.

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of the individual—to take Locke's sacred threesome. The sovereign individual lies at the base of traditional liberal doctrine, and this fact is reflected in liberalism's chief theoretical construct, namely, the social contract. In the social contract, isolated individuals come together and, based on their self-interest, choose to enter civil society in order to secure the life, liberty, and property which they possess only insecurely in the state of nature.

Hegel's critique of liberalism focuses on the individualism upon which it rests. In his critique, this liberal individualism presents two different aspects, not always clearly distinguished by Hegel himself. The first aspect has to do with the individualistic end or purpose which liberalism attributes to the state, namely, the securing of the life, liberty, and property of the individual. This, of course, is the core of the classical liberalism espoused by such early modern thinkers as Locke, Montesquieu, Hume, and the American Founders. But Hegel's critique of liberalism frequently focuses on another aspect of individualism, this one having to do not with the individualistic end or purpose which liberalism attributes to the state but with the individualistic or consensual basis upon which liberalism insists the state and government must rest. This aspect of liberal individualism Hegel associates primarily with the revolution in political philosophy wrought by Rousseau and with the very practical revolution in France which it spawned. In some ways, the individualism Hegel refers to here has more to do with democracy than with liberalism per se. It is interesting to note, however, that, in the one place he actually uses the word "liberalism," it is in connection with this second, Rousseauian aspect of individualism.¹⁴

We may now turn to Hegel's specific criticisms of each of these two aspects of liberal individualism, beginning with the first, which envisages the state's end as securing the life, liberty, and property of individuals. In the *Philosophy of Right*, Hegel identifies this classical liberal understanding of the state with the standpoint of civil society; it is the state as the understanding conceives it, "the external state, the state of necessity" (PR, par. 183).¹⁵

14. G.W.F. Hegel, *The Philosophy of History*, trans. J. Sibree (New York: Dover, 1956), p. 452; *Werke*, ed. E. Moldenhauer and K. M. Michel (Frankfurt: Suhrkamp, 1971), 12: 534.

15. References to Hegel's *Philosophy of Right* (PR) appear in the text in parentheses. For the most part I have relied on H. B. Nisbet's English translation,

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And his reasons for rejecting it are most clearly expressed in that part of the *Philosophy of Right* where Hegel tries to differentiate his own understanding of the state from that belonging to civil society. He writes, in the important Remark to Paragraph 258:

If the state is confused with civil society and its determination is equated with the security and protection of property and personal freedom, *the interest of individuals as such* becomes the ultimate end for which they are united; it also follows from this that membership of the state is an optional matter. But the relationship of the state to the individual is of quite a different kind. Since the state is objective spirit, it is only through being a member of the state that the individual himself has objectivity, truth, and ethical life. *Union* as such is itself the true content and end, and the destiny of individuals is to lead a universal life (PR, par. 258R).

This passage encapsulates almost the whole of Hegel's critique of the classical liberal conception of the state. According to this liberal conception, the individual qua individual is of supreme value. The state serves merely as a means by which the individual can more safely and securely pursue his or her own particular ends or purposes. But Hegel rejects this understanding of the relationship of the state to the individual. The state is not simply a means to the satisfaction of the individual in his or her own particularity. Rather, the state is the objective embodiment of that universality which represents the destiny and deepest essence of human beings. For this reason, it is a mistake to view the state as being based on a contract. A contract is something grounded in the arbitrary wills of individuals and at their option. But for Hegel membership in the state cannot be an optional matter. Again, the state represents the objectification of the universal and rational essence of human beings. Therefore, there is an obligation to belong to it. As Hegel puts it in another place: "It is the rational destiny of human beings to live within the state, and even if no state is yet present, reason requires that one be established" (PR, par. 75A). Against the liberal contractual model of the state, Hegel here returns to the Aristotelian understanding of man as by nature a political animal.

Elements of the Philosophy of Right, ed. Allen Wood (Cambridge: Cambridge University Press, 1991). For the German, see Moldenhauer and Michel, *Werke*: 7.

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Hegel's difference with classical liberalism here ultimately relates back to his very different understanding of human freedom. For both Hegel and classical liberalism, the state exists to promote human freedom, but what each understands by freedom is very different. For Hegel, the freedom that the liberal state seeks to protect and enlarge is merely the freedom of the "arbitrary will" (*Willkür*), the freedom to do as one pleases. But this is not genuine freedom, according to Hegel. For the content of the arbitrary will consists merely in our natural drives and inclinations, and this content stands in direct contradiction with the universal form of the will. The truly free will—what Hegel calls the "rational will"—must will the universal, freedom, itself. This it does by willing law and the state. Law and the state in no way constitute a limitation of our freedom, unless we understand freedom wrongly as arbitrary caprice and the satisfaction of our particularity. Rather, law and the state represent the highest fulfillment of our freedom understood as rational freedom.¹⁶

Hegel's idea of rational freedom is obviously related to the Kantian idea of rational autonomy. Though Hegel heaps criticism on the formalism of the Kantian moral will, this should not blind us to the significant affinities his idea of freedom as rational self-determination has with Kant's. What Hegel ultimately criticizes Kant for is not his idea of freedom as rational autonomy but, rather, his failure to ground this idea of freedom in a less oppositional relationship to sensuous nature, the world, and otherness in general. Related to this, Hegel also criticizes Kant for failing to incorporate his idea of rational autonomy more fully into his political philosophy. The revolutionary idea of freedom upon which his moral philosophy is based Kant abandons in his political philosophy, which rests instead on a more empiricist and conventionally liberal notion of freedom. Hegel quotes Kant's definition of right (*Recht*) in the *Rechtslehre* to the effect that right consists in "the limitation of my freedom or arbitrary will in such a way that it may coexist with the arbitrary will of everyone else in accordance with a universal law." And he comments that such a definition of right is ultimately

16. For this analysis of freedom, see the Introduction to *PR* in general, especially par. 15. See also G.W.F. Hegel, Introduction to *The Philosophy of History*, trans. Leo Rauch (Indianapolis: Hackett, 1988), pp. 41–44; *Werke* 12: 55–59.

based, not on the will understood as the rational will, but on the will understood "as the *particular* individual, the will of the single person in his distinctive arbitrariness" (PR, par. 29R).¹⁷

It would perhaps be cavalier, even in such a brief overview of Hegel's idea of rational freedom, not to take some notice of Isaiah Berlin's famous criticisms of the idea, coming as they do from a classical liberal point of view. Hegel's idea of rational freedom is, of course, a version of what Berlin defines as the "positive" concept of freedom. Berlin is certainly right to distinguish this positive notion of freedom as rational self-direction from the conventionally liberal, "negative" notion of freedom, which he defines as the ability to pursue our wants and desires without obstruction or intrusion. Where his argument goes wrong is when he claims that the positive notion of freedom necessarily leads to authoritarianism or totalitarianism when applied to the realm of politics. In order to sustain this claim, Berlin finds it necessary to attribute to adherents of positive freedom the assumption that in morals and politics "there must exist one and only one true solution to any problem."¹⁸ Of course, once this assumption is admitted, it is not difficult to derive the features of a full-blown totalitarian rationalism, replete with the "rule of experts" and an "elite of Platonic guardians."¹⁹ The problem is, the assumption has nothing to do with Hegel. Nowhere in his thought do we find such a rigid and simple-minded rationalism. Indeed, as we shall soon see, the Hegelian state accommodates a considerable amount of diversity in the form of what he calls the "right to the satisfaction of the subject's particularity" (PR, par. 124R). Hegel's idea of freedom is not the conventional or classical liberal one. But this does not mean that it is therefore totalitarian. There is, perhaps, something in between.

Hegel's antipathy to the classical liberal understanding of the state as a mechanism for securing the life, liberty, and property of individuals is one of the most constant elements in his political philosophy, going all the way back to his earliest writings on

17. PR, par. 29R. For Kant's exact formulation of his definition of right, see *Kant's Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1970), p. 133.

18. Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), p. 145.

19. *Ibid.*, p. 152.

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politics. In the early essay, "The Positivity of the Christian Religion" (1795–96), for example, Hegel laments the loss of republican freedom amongst the Greeks and Romans and the replacement of civic virtue and the "freedom to obey self-given laws" by individualism and the "right to the security of property."²⁰ And in a parallel passage from the "Berne Fragments" (1793–94), he writes, apparently with reference to the recent Kantian revolution in morality,²¹ that humanity has begun to emerge from its "centuries-long preoccupation with the individual in his particularity." "Now that moral ideas can play a role in the lives of human beings," the "comforts and adornments" of private existence have begun to "sink in value"; and "constitutions that merely guarantee life and property are no longer regarded as best."²² Already here one can see the connection between Hegel's appropriation of the Kantian idea of moral freedom and his critique of the nightwatchman state of classical liberalism.

In his pre-*Phenomenology* Jena writings as well—*Natural Law* (1802–1803), *System of Ethical Life* (1802–1803), and the philosophies of spirit of 1803–1804 and 1805–1806—Hegel exhibits a consistent hostility to the idea that the state is there merely to protect the life and property of individuals. Throughout these writings, he subordinates the particularistic claims of economic life to the genuine freedom and universality of "absolute ethical life" (*absolute Sittlichkeit*). Sometimes he identifies each of these aspects of social life with a specific social class. Corresponding to absolute ethical life and serving as custodians of the political whole is the class of the free, a military class distinguished by the virtue of courage and a willingness to risk violent death for the sake of the whole. Corresponding to economic life, what Hegel sometimes refers to as "relative ethical life," is the class of the unfree, the *bourgeoisie*, which "exists in the difference of need and work, and

20. G. W. F. Hegel, "The Positivity of the Christian Religion," in *Early Theological Writings*, trans. T. M. Knox (Chicago: University of Chicago Press, 1948), pp. 156–57; *Werke*, 1: 206.

21. On this Kantian revolution, see Hegel's letter to Schelling, 16 April 1795, in *Hegel: The Letters*, trans. C. Butler and C. Seiler (Bloomington: Indiana University Press, 1984), pp. 35–36.

22. G.W.F. Hegel, "Berne Fragments," in *Three Essays, 1793–95*, trans. P. Fuss and J. Dobbins (Notre Dame: Notre Dame University Press, 1984), p. 102; *Werke*, 1: 100–101.

in the law of justice of possession and property; its work concerns the individual and thus does not include the danger of death."²³ As this distinction between the free, political class and the unfree, economic class suggests, Hegel does not identify the freedom of absolute ethical life with the security of individual life and property but precisely with the willingness to sacrifice these for the sake of the political whole or the universal. This is what Hegel describes throughout these Jena writings—as well as later on in the *Philosophy of Right*—as the ethical significance of war: in war all personal security and property “vanish in the power of the universal.”²⁴

It is in this context, too, that Hegel's various accounts of the struggle for recognition in these pre-*Phenomenology* Jena writings should be seen.²⁵ The struggle for recognition plays a more directly political role in these early accounts than in the later, more famous account found in the *Phenomenology*. With it Hegel is concerned to explain—philosophically, not historically—the transition from prepolitical life to ethical or political life proper in the state. The struggle for recognition thus plays a role similar to that played by the state of nature in earlier social contract theory, but Hegel draws from it very different consequences. For what is at issue here is not self-preservation or security of property but precisely recog-

23. G. W. F. Hegel, *Natural Law: The Scientific Ways of Treating Natural Law, Its Place in Moral Philosophy, and Its Relation to the Positive Science of Law*, trans. T. M. Knox (Philadelphia: University of Pennsylvania Press, 1975), pp. 92–95, 99–100; *Werke*, 2: 480–84, 489.

24. G. W. F. Hegel, *Hegel and the Human Spirit: The Jena Lectures on the Philosophy of Spirit of 1805–6*, trans. Leo Rauch (Detroit: Wayne State University Press, 1983), 171; *Gesammelte Werke*, ed. Rheinische-Westfaelische Akademie der Wissenschaften (Hamburg: Felix Meiner, 1968–), 8: 276. See also *Natural Law*, p. 93 (*Werke*, 2: 481–82); *PR*, par. 324R. It should perhaps be pointed out here that, though Hegel continues to speak of the “ethical moment of war” in *PR*, the idea of individuals making heroic sacrifices on behalf of the state plays a much smaller role in this work than it does in his earlier writings. See in particular what he says about the generally nonheroic and everyday character of patriotism (*PR*, par. 268R).

25. See G. W. F. Hegel, *System of Ethical Life*, trans. H. S. Harris and T. M. Knox (Albany: SUNY Press, 1979), pp. 137–42 (*System der Sittlichkeit*, ed. G. Lasson [Hamburg: Felix Meiner, 1967], pp. 46–52); *First Philosophy of Spirit*, trans. H. S. Harris (Albany: SUNY Press, 1979), pp. 236–41 (*Gesammelte Werke*, 6: 307–14); *Philosophy of Spirit of 1805–1806*, pp. 110–18 (*Gesammelte Werke*, 8: 213–21).

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nition—recognition of the individual as a spiritual being and an absolutely free personality. And it is only by risking life and property, by engaging in a “life and death struggle,” that such recognition can be achieved. For Hegel, the transition from the state of nature to ethical or political life involves something far more grandiose—namely, absolute freedom—than anything found in Hobbes or Locke. Once again we are made aware of why he cannot accept protection of life, property, or even of particularistic personal liberty as the ultimate end or purpose of the state.

So much, then, for Hegel’s critique of the first aspect of liberal individualism we identified above. We may now turn to the second aspect we distinguished, that having to do with the individualistic or consensual basis upon which liberalism insists the state and government must rest. The issue here is no longer civil or economic liberty but political liberty. The demand is that the state or government should correspond to the will of the individual. The thinker with whom Hegel preeminently associates this democratic demand for political liberty is Rousseau. And his critique of this democratic aspect of individualism for the most part coincides with his critique of the Rousseauan notion of the general will.

To develop Hegel’s critique here, let us return once again to the important Remark to Paragraph 258 of the *Philosophy of Right*. Having rejected protection of life, property, and personal liberty as the ultimate end of the state, Hegel turns his attention to Rousseau’s conception of the state. And it is at once clear that he finds this conception to be deeper and more spiritual than the instrumental conception of the state of classical liberalism. “It was the achievement of Rousseau,” he writes, “to put forward the *will* as the principle of the state, a principle which has *thought* not only as its form . . . but also as its content” (PR, par. 258R). Whereas earlier social-contract theorists such as Hobbes and Locke made self-preservation or property-protection the principle of the state, Rousseau made free will itself the principle of the state. It is only with Rousseau, Hegel maintains in his *Lectures on the History of Philosophy*, that freedom was recognized as “the distinguishing feature of man.” He quotes the *Social Contract* to the effect that “to renounce one’s freedom is to renounce that one is a man,” and he goes on to conclude that, with Rousseau, there came “into con-

sciousness as content the sense that man has liberty in his spirit as the altogether absolute, that free will is the notion of man."²⁶

Despite Rousseau's great achievement in making will the basis of the state, Hegel goes on to argue that he completely undermined this achievement by understanding the will in the wrong way, taking it as the individual will instead of as the rational will. "Rousseau considered the will only in the determinate form of the *individual* will (as Fichte subsequently also did) and regarded the universal will not as the will's rationality in and for itself, but only as the *common element* arising out of this individual will *as a conscious will*" (PR, par. 258R). It might be objected that Hegel's interpretation of Rousseau's notion of the general will here is one-sidedly individualistic. After all, Rousseau does take some trouble to distinguish the general will from what he calls the "will of all." Nevertheless, Rousseau's doctrine of the general will is notoriously ambiguous, and Hegel's interpretation of it does capture certain individualistic elements which creep into it: for example, Rousseau's contention that, in joining civil society and submitting to the general will, each "nevertheless obeys only himself and remains as free as before"; his insistence that the general will cannot be represented and demands some sort of directly democratic arrangement; and so forth.²⁷

At any rate, Hegel sees the individualism implicit in Rousseau's democratic doctrine of the general will as having disastrous consequences for our understanding of the state, consequences which were realized in the destructive events of the French Revolution. When the universal will is misunderstood as merely the common element arising out of everybody's individual will, he writes,

the union of individuals within the state thus becomes a *contract*, which is accordingly based on their arbitrary will and opinions, and on their express consent given at their own discretion; and the further consequences which follow from this, and which relate merely to the understanding, destroy the divine [element] which has being in and for

26. G. W. F. Hegel, *Lectures on the History of Philosophy*, trans. E. S. Haldane and F. H. Simson (London: Routledge & Kegan Paul, 1968), 3: 401–402; *Werke*, 20: 306–308. See Rousseau, *Social Contract*, I, 4.

27. See the *Social Contract*, I, 6; III, 12–15.

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itself and its absolute authority and majesty. Consequently, when these abstractions were invested with power, they afforded the tremendous spectacle, for the first time we know of in human history, of the overthrow of all existing and given conditions within an actual major state and the revision of its constitution from first principles and purely in terms of *thought*.²⁸

The connection Hegel draws here between Rousseau's doctrine of the general will and the terrible events of the French Revolution runs through his writings and goes all the way back to his famous discussion of the French Revolution in the *Phenomenology*. In that work, the French Revolution is seen as the product of what Hegel calls "absolute freedom," which he interprets in terms of the Rousseauan notion of the general will. As he did in the passage from the *Philosophy of Right* above, Hegel interprets Rousseau's notion of the general will quite individualistically. The general will, he writes, "is not the empty thought of will which consists in silent assent, or assent by a representative, but a real general will, the will of all *individuals* as such." According to this doctrine of the general will, "each, undivided from the whole, always does everything, and what appears as done by the whole is the direct and conscious deed of each." But no actual state can embody such a general will. No state can fulfill the demand that every act of government be the "direct and conscious deed of each," that every act of government should emanate from the self-conscious decision of every individual. Every state—and especially the rational state—involves a certain amount of social differentiation and political representation. The basic flaw of the absolutely free individual consciousness when it comes to the state is that "it lets nothing break loose to become a *free object* standing over against it. It follows from this that it cannot achieve anything positive, either universal works of language or of reality, either of laws and general institutions of *conscious* freedom, or of deeds and works of a freedom that *wills* them." Unable to produce a positive work or deed, the only thing left for the individual consciousness characterized by absolute freedom is "negative action" and the "fury of destruction."²⁹

28. PR, par. 258R.

29. G. W. F. Hegel, *Phenomenology of Spirit*, trans. A. V. Miller (Oxford: Clarendon Press, 1977), pp. 357–59; *Werke*, 3: 432–36.

Hegel's discussion of the French Revolution in the *Phenomenology* makes clear why he rejects the democratic individualism which he identifies with Rousseau's doctrine of the general will. There is one more passage, however, coming from the *Philosophy of History*, which I would like to draw attention to. This passage not only very clearly encapsulates the sort of democratic individualism to which Hegel opposes himself, it also connects this democratic individualism to what Hegel understands by "liberalism." In this passage, Hegel is concerned not with the French Revolution per se but with its legacy in the post-Napoleonic state. In this state, we still encounter the demand that

the ideal general will should also be *empirically* general—i.e. that the units of the state, in their individual capacity, should rule, or at any rate take part in government. Not satisfied with the establishment of rational rights, with freedom of person and property, with the existence of a political organization in which are to be found various circles of civil life each having its own functions to perform, and with that influence over the people which is exercised by the intelligent members of the community, and the confidence that is felt in them, *Liberalism* sets up in opposition to all this the atomistic principle, that which insists upon the sway of individual wills; maintaining that all government should emanate from their express power, and have their express sanction.³⁰

As he did in previous discussions of the French Revolution, Hegel proceeds to show how the "liberal" and atomistic principle which insists that all government action should emanate from the express consent of individuals prevents any stable political organization from being established and leads only to perpetual "agitation and unrest." He also says that the political problem posed by this liberal individualism is the one "with which history is now occupied, and whose solution it has to work out in the future."³¹

Hegel's critique of what we have been calling the second aspect of liberal individualism—that aspect having to do with consensual basis of the state and government—began from his critique of Rousseau's misinterpretation of the universal will in terms of the individual will. In opposition to Rousseau, Hegel

30. *Philosophy of History*, p. 452; *Werke*, 12: 534.

31. *Philosophy of History*, p. 452; *Werke*, 12: 534–35.

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interprets the universal will in terms of the rational will. Unlike the individual will, the rational will does not derive its content from something other than itself, namely, from our inclinations and desires. Rather, the rational will derives its content from the concept of will, freedom, itself. The rational will is simply the will that wills freedom and hence itself. While for the individual will it is the mere fact that the individual chooses that is important, for the rational will it is *what is chosen* that is decisive. It is the rationality of the content of the rational will, whether that content is chosen by individuals or not, that Hegel emphasizes in his critique of Rousseau's notion of the general will in the Remark to Paragraph 258 of the *Philosophy of Right*:

In opposition to the principle of the individual will, we should remember the fundamental concept according to which the objective will is rational in itself, i.e. in its *concept*, whether or not it is recognized by individuals and willed by them at their discretion—and that its opposite, knowledge and volition, the subjectivity of freedom (which is the *sole* content of the principle of the individual will) embodies only one (consequently one-sided) moment of the *Idea of the rational will*, which is rational solely because it has being both *in itself* and *for itself* (PR, par. 258R).

Hegel's subordination of the subjective, "for itself" character of the individual will to the objective, "in itself" rationality of the genuinely free will in this passage clearly encapsulates his departure from the conventional liberal understanding of freedom and from the liberal idea of the state which is ultimately based on it. Nevertheless, though "the subjectivity of freedom" is clearly subordinated to the objectivity of the rational will in this passage, it is not altogether ignored. Hegel does say that this subjectivity of freedom constitutes one moment of the Idea of the rational will. We must now consider more carefully the exact place of this subjective aspect of freedom—the aspect beloved by liberalism—in Hegel's overall conception of the rational state.

The Role of Subjective Freedom

As we have seen, Hegel criticizes liberalism for its understanding of the state as a mere means to the protection and enhancement of the personal or particular freedom of individuals. For him, the state is not a means at all but, rather, an end in itself. It is the

realization of the rational freedom of human beings, the actualization of their ownmost essence. The state, he writes in the Introduction to the *Philosophy of History*, "is the reality wherein the individual has and enjoys his freedom—but only insofar as he knows, believes, and wills the universal." Freedom does not consist in the arbitrary caprice of the individual. Rather, "it is law, ethical life, the state, and they alone, which comprise the positive reality and satisfaction of freedom. The freedom which is limited in the state is that of caprice, the freedom that relates to the particularity of individual needs."³²

It is in connection with this understanding of the state as the realization of the rational freedom of human beings that some of Hegel's most extravagant claims on behalf of the state and some of his most anti-individualistic remarks appear. For example, again in the Introduction to the *Philosophy of History*, he writes that "all the value that human beings possess, all of their spiritual reality, they have through the state alone. Their spiritual reality consists in the fact that their essence—rationality—is objectively there for them as knowers."³³ And in the *Philosophy of Right*, he describes the relationship of individuals to ethical life as that of accidents to substance: "Whether the individual exists or not is a matter of indifference to objective ethical life, which alone has permanence and is the power by which the lives of individuals are governed" (*PR*, par. 145A). Statements such as these, as I have tried to indicate above, can be given a nonsinister—if not exactly liberal—meaning when understood in the context of Hegel's total doctrine of rational freedom or rational will. Nevertheless, this has not prevented Hegel's critics from reading into these statements a totalitarian intention.

Even if not totalitarian, Hegel's "rationalistic" outlook described above is fairly far removed from the individualistic outlook of conventional liberalism. But there is another aspect of Hegel's political teaching which gives far-reaching recognition to the individuality and subjective freedom he disparages elsewhere. Hegel uses a variety of phrases to refer to this aspect of his political teaching—"the right of the subject to find satisfaction in the action," "the right of the subject's particularity to find satisfaction," "the

32. Introduction to *The Philosophy of History*, p. 41; *Werke*, 12: 55–56.

33. Introduction to *The Philosophy of History*, pp. 41–42; *Werke*, 12: 56.

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freedom of particularity," and, most simply, "subjective freedom" (PR, pars. 121, 124R, 185R, 260A). And he claims in a number of places that it is the recognition of this principle of subjective freedom which distinguishes the modern state from the states of classical antiquity and renders it superior to them (PR, pars. 124R, 185R, 260A). It is, of course, this more individualistic aspect of Hegel's political teaching that liberal interpreters have latched onto in defending Hegel against the charges of statism or totalitarianism. And while they are largely right to do so, we would do well to go beyond this apologetic impulse and consider more carefully the exact place of subjective freedom in Hegel's political philosophy as a whole.

Let us begin with Hegel's discovery of the importance of individuality and subjective freedom in his political philosophy. For, unlike his doctrine of rational freedom and its realization in the state, Hegel's appreciation for modern individuality and subjectivity was not present in his philosophy from the start. In his earliest writings on religious-political themes, for example, the ideal of the classical polis is still firmly embedded in Hegel's imagination, and there is little recognition of—or at least reflection on—the inappropriateness of this ideal to modern conditions. This begins to change in *The German Constitution* (1799–1802), where Hegel makes a number of interesting distinctions between ancient and modern political conditions.³⁴ But Hegel's achievement in this regard remains somewhat uncertain through much of the Jena period. As Jean Hyppolite remarks, there is something "oddly archaic" about such works as the *Natural Law* essay and the *System of Ethical Life*: "The polis and Platonic ideal mingle freely with eighteenth-century states in a completely unhistorical exposition."³⁵ It is only in the *Philosophy of Spirit* of 1805–1806 that Hegel finally and fully appreciates the difference between the "deeper spirit" of modern individuality and the naive unity of individual and collective in the Greek polis. This individuality, he writes, represents

34. See *The German Constitution*, in *Hegel's Political Writings*, trans. T. M. Knox (Oxford: Clarendon Press, 1964), pp. 158, 160, 202–6, 217, 234, 237, 241; *Werke*, 1: 477–78, 479–80, 532–37, 550–51, 571–72, 575, 580.

35. Jean Hyppolite, *Genesis and Structure of Hegel's Phenomenology of Spirit*, trans. S. Cherniak and J. Heckman (Evanston: Northwestern University Press, 1974), p. 331.

the higher principle of the modern era, a principle unknown to Plato and the ancients. In ancient times, the common morality consisted of the beautiful public life—beauty [as the] immediate unity of the universal and the individual, [the polis as] a work of art wherein no part separates itself from the whole, but is rather the genial unity of the self-knowing Self and its [outer] presentation. Yet individuality's knowledge of itself as absolute—this absolute being—within-itself—was not there. The Platonic Republic is, like Sparta, [characterized by] this disappearance of self-knowing individuality.³⁶

Hegel's abandonment of his early Hellenic ideal and his growing appreciation of modern subjectivity and individuality is thoroughly reflected in the argument of the *Phenomenology* of 1807. The overall intention of this work is to grasp the true "not only as substance but also as subject." And in keeping with this intention, Hegel traces the historical path of spirit from the immediate substantiality of the Greek polis to the complete mediation of this substantiality by subjectivity in the modern world. Though this historical process involves the utmost pain, fragmentation, and self-alienation, Hegel ultimately sees it as necessary for a fully self-conscious relationship to the universal and the absolute. Contrary to what some commentators have argued, the *Phenomenology* cannot be seen simply as a "massive assault upon the 'subjectivity' of individualism" or as an "elegy for Hellas."³⁷ James Schmidt has it much more right when he remarks that the *Phenomenology* "is not so much an elegy for Hellas as an exorcism of Hegel's own obsession with Athens."³⁸

This brings us back to the *Philosophy of Right*. Individuality and subjective or particular freedom are built into the very

36. *Philosophy of Spirit* of 1805–6, p. 160; *Gesammelte Werke*, 8: 263.

37. Judith Shklar, "Hegel's 'Phenomenology': An Elegy for Hellas," in *Hegel's Political Philosophy: Problems and Perspectives*, p. 74. This distorting understanding of the *Phenomenology* as an elegy or "lament" for Hellas thoroughly informs Shklar's book, *Freedom and Independence: A Study of the Political Ideas of Hegel's 'Phenomenology of Mind'* (Cambridge: Cambridge University Press, 1976); see especially pp. 69–95. Patrick Riley seems to follow Shklar in understanding the *Phenomenology* as an assault on modern subjectivity and individualism; see *Will and Political Legitimacy: A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel* (Cambridge, MA: Harvard University Press, 1982), pp. 164, 176–89, 190–91, 197–98.

38. James Schmidt, "Recent Hegel Literature: The Jena Period and the *Phenomenology of Spirit*," *Telos* 48 (Summer 1981), p. 141.

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structure of that work. In the section devoted to "abstract right," Hegel vindicates the right of the "person" to own property. And in the section devoted to "morality," he vindicates the right of the "subject" to find satisfaction—the satisfaction of his particularity—in his actions. It is in "civil society," however, that subjective freedom and particularity receive their supreme recognition in Hegel's argument. There, in the endless satisfaction of economic needs and wants, we find particularity "indulging itself in all directions as it satisfies its needs, contingent arbitrariness, and subjective caprice" (*PR*, par. 185). It is true, as we have already seen, that Hegel ultimately sees civil society as having to be surpassed (*aufgehoben*) by the state; and that he argues against the confusion whereby the state is seen to exist for civil society instead of the other way around. Nevertheless, for Hegel, *aufgehoben* means not only to cancel but to preserve. And it is clear from the argument of the *Philosophy of Right* that the subjective freedom and particularity of civil society are to be preserved in the state, even if they are not to be treated as absolute or regarded as the ultimate ends for which the state exists.

Why is it so important that subjective freedom be preserved within the state? Hegel's answer to this question has a couple of angles to it. In the first place, as we have already seen, the right of subjective freedom represents the "higher principle" of modernity versus the purely substantial principle of antiquity. Largely the endowment of Christianity, subjective freedom is something modern people have not only learned to manage and come to enjoy but also to expect and demand to be satisfied. Such a demand the modern state cannot ignore.

In addition to this, though, Hegel also sees a tremendous practical advantage accruing to the state from its incorporation of subjectivity and particularity. If the state can somehow link its universal interest to the particular interest of the individual, it will be internally strong and stable. If, on the other hand, the individual does not find the satisfaction of his particularity in the state, the state will be weak; its universality will remain abstract, without actuality.

What matters most is that the law of reason should merge with the law of particular freedom, and that my particular end should become identical with the universal; otherwise, the state must hang in the air. It is the

self-awareness of individuals which constitutes the actuality of the state, and its stability consists in the identity of the two aspects in question (PR, par. 265A).

The modern state is strong and stable, according to Hegel, precisely because it allows for the satisfaction of subjective freedom and shows itself to be "the sole precondition of the attainment of particular ends and welfare" (PR, par. 261A). "The principle of modern states has enormous strength and depth because it allows the principle of subjectivity to attain fulfillment in the *self-sufficient extreme* of personal particularity, while at the same time *bringing it back to substantial unity* and so preserving this unity in the principle of subjectivity itself" (PR, par. 260).

Hegel's point here about the need for the individual to find his particular interests—his person, his property, his particular welfare—protected and secured in the state in order for the latter to be strong and stable may seem to blur the point we saw him make repeatedly above about the state's not being a mere means to the protection of the life, liberty, and property of the individual. Indeed, he says at one point that

it has often been said that the end of the state is the happiness of its citizens. This is certainly true, for if their welfare is deficient, if their subjective ends are not satisfied, and if they do not find that the state as such is the means to this satisfaction, the state itself stands on an insecure footing (PR, par. 265).

We must be careful not to misconstrue what Hegel says here, however. He does not say that the ultimate end of the state is to promote the subjective freedom or particular interests of individuals. He only says that individuals must find their subjective ends satisfied in the state and that they must see the state as somehow instrumental to this satisfaction; otherwise the state will stand "on an insecure footing." Again, his point is a practical one. It is not about the ultimate end of the state but about what is necessary to make that end—the universal, rational freedom—actual and concrete.

Hegel places a great deal of importance on the unity of particular and universal, subjective will and rational will, in the state. He says in one place: "Everything depends on the unity of the universal and the particular within the state" (PR, par. 262A). And in another, he states that it is "a proposition of the highest intrinsic

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importance" that "a state is well-constituted and strong if the private interest of citizens is united with the universal goal of the state, so that each finds its fulfillment and realization in the other."³⁹ Much of what Hegel has to say about the "internal constitution" of the state is designed to address this problem of uniting the particular interest of the individual with the universal end of the state. His concern is that the substantiality of the state not appear as something alien or other to the subject but, rather, as something in which the particularity of the subject is fulfilled. In this way, a patriotic disposition is inculcated in citizens: "the consciousness that my substantial and particular interest is preserved and contained in the interest and end of an other (in this case, the state)," so that "this other immediately ceases to be an other for me" (PR, par. 268).

Hegel's concern with linking the individual to the state and preventing the latter from appearing as an alien force is evinced particularly clearly in his distaste for administrative centralization. This distaste appears quite early in Hegel's reflections on politics. In *The German Constitution*, for example, he criticizes what he calls the "machine state" (which he associates with Fichte, on the one hand, and with Jacobin France and Frederician Prussia, on the other) in which everything in society is regulated from the top down by the supreme public authority. Anticipating Tocqueville, he decries the effects such administrative centralization has on the public spirit and civic virtue of citizens: "How dull and spiritless a life is engendered in a modern state where everything is regulated from the top downwards, where nothing with any general implications is left to the management and execution of interested parties of the people."⁴⁰

In the *Philosophy of Right*, he reiterates this criticism of administrative centralization, which he now associates primarily with France. In France, not only is everything controlled from above, but there is a lack of "corporations and communal associations"—here again one thinks of Tocqueville—"that is, circles in which particular and universal interests come together."

39. Introduction to *The Philosophy of History*, p. 27; *Werke*, 12: 39.

40. *The German Constitution*, pp. 163–64; *Werke*, 1: 484. Compare Tocqueville on "administrative decentralization," in *Democracy in America*, vol. 1, pt. 1, chap. 5.

For Hegel, such corporations and communal associations play a crucial role in preventing individuals from degenerating into a "collection of scattered atoms" and also in preventing the state from becoming something alien and remote from the particular interests of individuals (*PR*, par. 290A). A similar concern with uniting particular interests with the universal interest, the subjective will with the rational will, informs Hegel's reflections on political representation and the role of the people in legislation. The modern principle of subjective freedom demands that the personal will and insight of individuals receive some sort of recognition in the process of universal legislation. This is the role of parliamentary institutions, according to Hegel. "The role of the Estates [in the political sense] is to bring the universal interest into existence not only *in itself* but also *for itself*, i.e. to bring into existence the moment of subjective *formal freedom*" (*PR*, par. 301). Put more simply: "The proper significance of the Estates is that it is through them that the state enters into the subjective consciousness of the people, and that the people begins to participate in the state" (*PR*, par. 301A).

Hegel, then, is concerned that the personal will and insight of individuals be reflected in the legislative process at some level. But he is equally, if not more, concerned that this legitimate demand on the part of subjectivity not escalate into the radical demand that government or legislation correspond directly to or emanate directly from the subjective wills of individuals. This is precisely the sort of democratic individualism we saw Hegel reject in his critique of liberalism. In order to combat such democratic individualism, he proposes that the corporations based on the estates in civil society serve as the basis for political representation. By being represented through their corporations, individuals cease to present themselves as a mere "aggregate" or "unorganized crowd," and their interests can be pursued in a "legitimate and orderly manner" (*PR*, pars. 302–303). Here particularity and subjectivity are given their due without being allowed to overwhelm the universality and rationality of the state.

No doubt Hegel's strictures on democracy seem rather outdated today—not to mention his elaborate differentiation of the various estates and corporations of civil society. Nevertheless, they serve to underline just how far he is willing to go with respect to the principle of subjective freedom. As we have seen, he regards

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this principle as being of the utmost importance, distinguishing the modern moral and political outlook from the substantialism and unselfconsciousness of the ancient. Nevertheless, he does not regard it as absolute. Subjective freedom ultimately remains subordinate or auxiliary to the primary good of rational freedom. Subjective freedom serves to "activate" the universal (PR, par. 260A) and endow the rational substance of the state with self-consciousness. But, in contrast with liberalism, it does not constitute the ultimate end of the state. Once again we see that, while the Hegelian state is able to accommodate most of the rights and freedoms that are found in the liberal state, its justification for doing so is very different from the conventional liberal one.

There is one further issue that should perhaps be addressed here, having to do with Hegel's understanding of the relationship of the state to the individual. Some commentators have inferred from Hegel's subordination of subjective or particular freedom to the rational freedom embodied in the state that he is ultimately concerned not with individual freedom at all but, rather, with freedom in some cosmic spiritual sense. This seems to be the thrust of Frederick Neuhouser's criticism of Allen Wood's attempt to see Hegel's political philosophy as ultimately founded on the notion of individual self-actualization. Such a view is "misleading," Neuhouser maintains, because Hegel's "conception of self-actualization is derivative of his understanding of the self-actualization of Spirit. Individual self-actualization is an important notion for Hegel, but it is understood in such a way that individuals realize their essence not *as individuals* but as members of a collective, i.e., as vehicles of Spirit."⁴¹

This interpretation, however, takes Hegel too far in a nonindividualistic or transindividualistic direction. While it is perfectly true, as I have argued throughout this article, that Hegel rejects the individualistic standpoint of liberalism, this does not mean that he leaps into a diametrically opposed collectivism which sees individuals only as "vehicles of Spirit." There is something deceptive about Neuhouser's erection of "spirit" here into a cosmic

41. Frederick Neuhouser, review of *Hegel's Ethical Thought*, by Allen Wood, *Journal of Philosophy* 89 (1992): 320. Wood's treatment of this issue can be found in *Hegel's Ethical Thought*, pp. 21, 28–29, 237–38, 258–59.

substance somehow independent of individuals.⁴² For Hegel, the state is the realization of rational freedom. This means that it is only in the state that individuals realize their rational essence, their universality. In an important sense the state is prior to the individuals that compose it, and they are related to the state as accidents to substance. But this only means that the state is the embodiment of the rational or universal essence of individuals which constitutes their substantiality. The rational freedom embodied in the state is not different from the rational freedom of the individuals who are its members. There is no need to assume a transindividual subject of this rational freedom—cosmic *Geist*, or whatever—nor does Hegel do so.

Conclusion

Our brief examination of the role of subjective freedom in Hegel's political philosophy has yielded two important conclusions concerning Hegel's complex relationship to liberalism. First, in its incorporation of subjective freedom, the Hegelian state is able to account for almost all the rights and freedoms we ordinarily associate with the liberal state. Second, though Hegel is able to provide for these liberal rights and freedoms in his state, his ultimate justification for them is not the typical liberal one. Subjective or particular freedom is not the end or purpose of the Hegelian state, as it is of the liberal state. The end or purpose of the Hegelian state is rational freedom, the willing of the universal which corresponds to the universality of the human essence. It is only through its connection to this rational freedom that subjective freedom receives its ultimate justification as the activating and self-conscious element. The rational freedom which is realized in the Hegelian state is not inimical to subjective freedom—indeed, it derives its greatest strength and depth from being conjoined to subjective freedom—but neither is it simply identical or reducible to subjective freedom. It is in this notion of the state as the realization of rational freedom that Hegel most radically departs from the instrumentalist conception of the state which predominates in liberal theory.

42. The most influential attempt to interpret Hegel as viewing individuals ultimately as vehicles of cosmic *Geist* remains Taylor's *Hegel*.

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The question that confronts us now is that of the relevance of Hegel's ideal of the rational state to our understanding of contemporary liberalism and its discontents. Of what use is Hegel's peculiar blend of liberal and nonliberal ideas—his placement of liberal political ideals in the larger context of a nonliberal theoretical justification—to the understanding and/or defense of liberalism as we near the end of the twentieth century? This, of course, is a rather large question. And in this conclusion, I mean to offer only a few sketchy—but hopefully suggestive—ideas. Nevertheless, it is a question to which any thoughtful student of Hegel's political philosophy is inevitably driven, dwelling as we do in the intact but strangely insecure edifice of liberalism in the post-Marxian and (dare I say it?) postmodern era.

As to what Hegel positively has to contribute to contemporary reflection on liberalism, we do not have to search very far. Our attention is immediately drawn to his critique of liberal individualism. Hegel offers us a way out of the atomism and narrow self-interest of traditional liberal theory. He offers us a conception of the social good that is more exalted and inspiring than mere security of life and property. And he does all this without sacrificing the individual rights and liberties which constitute the central political ideals of liberalism. With respect to these liberal rights and freedoms, Hegel sets them in a larger context which endows them with a meaning and purpose beyond the one ordinarily given them in traditional liberal theory. Subjective freedom, particularity, and even arbitrariness are not seen as ends in themselves but, rather, as essential elements in a much grander conception of the nature and overall destiny of human beings.

It is, of course, this critique of liberal individualism which contemporary communitarians have fixed upon in their appropriation of Hegel's political philosophy. As I pointed out at the beginning of this article, there is much in the communitarian interpretation of Hegel to be commended. Above all, I am sympathetic to the communitarian attempt to find in Hegel an alternative to traditional and much contemporary liberal theory. Nevertheless, my interpretation moves in a slightly different direction. Whereas communitarians have tended to emphasize Hegel's break with Enlightenment rationalism and his affinity with such romantic themes as belonging, personal wholeness, and communal solidarity, I have stressed Hegel's doctrine of rational

freedom and self-determination—a doctrine which descends from the Kantian doctrine of rational autonomy and which, far from being antithetical to Enlightenment aspirations, in some ways represents their highest fulfillment. My interpretation cuts not only against the communitarians' positive appropriation of Hegel but also against those critics of communitarianism who see Hegel as an early and antiliberal exponent of "political romanticism."⁴³

For all the attractiveness of Hegel's critique of liberal individualism, however, his ideal of the rational state is not without its difficulties as an instrument for understanding and defending contemporary liberalism. In some ways these difficulties are simply the other side of the virtues of Hegel's theory of the state. What is attractive about Hegel's theory of the state, as we have seen, is that it preserves most of the individual rights and freedoms liberals prize, while at the same time placing them in a theoretical context which links them to something higher than mere self-interest, security, and arbitrariness; which links them to a more exalted conception of the rational and self-determining nature and destiny of human beings. But the question arises, is the purpose which Hegel here attributes to the state too exalted, too grand, for our current circumstances? Does his conception of the state as the actualization of rational freedom correspond, in the end, to what most people in liberal democracies currently understand the state as providing?

The answer to this question is obviously not an easy one to give. Nor is it clear that Hegel would see the deliverances of ordinary or unreflective consciousness on this issue as decisive, although he frequently invokes the agreement between philosophy and ingenuous consciousness as proof against the sophistries of the sophisticated consciousness.⁴⁴ Nevertheless, if I had to venture a guess, I would say that the vast majority of the denizens of modern liberal democracies do not view the state as Hegel viewed it, as the realization of their rational freedom, but, rather, in precisely the instrumental way he found inadequate, namely, as a vehicle for pursuing their own self-chosen ends, a necessary condition for the widest exercise of their arbitrary will.

43. See Larmore, *Patterns of Morality*, pp. 91–107.

44. See, e.g., the Preface to *PR*.

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In this regard, Hobbes and Locke continue to come much closer to the self-understanding of most members of liberal democracies than does Hegel. And perhaps even better than Hobbes and Locke is John Stuart Mill. Mill manages to combine the instrumental conception of the state typical of earlier liberalism with a more highly developed doctrine of individual self-actualization. It is this combination of a utilitarian conception of the state with a romantic conception of individuality which forms the deepest core of the ordinary citizen's belief in contemporary liberalism. The state is understood as a means to the greatest possible personal freedom, which is itself seen as a means to the greatest possible individuality and diversity. There is, of course, a great deal more to Mill than this—the belief in rational progress and so forth—but this constitutes his most enduring legacy to the contemporary self-understanding of liberalism.

A contemporary variation on this Milleian and not very Hegelian theme of a limited state designed to promote the widest possible individuality is provided by Michael Oakeshott. Oakeshott may not seem the most likely thinker to bring up in connection with Mill and in opposition to Hegel. The references to Mill in his writings are at best equivocal, whereas the treatment of Hegel is generally quite positive. Indeed, a deep Hegelian strain runs through most of Oakeshott's writings. But Oakeshott's Hegelianism is largely of a methodological character. When it comes to his liberal ideal of civil association, it is the influence of Hobbes, not that of Hegel, which dominates—though Oakeshott tries valiantly to provide an interpretation of Hegel which makes him compatible with Hobbes.⁴⁵ Civil association, for Oakeshott, is the mode of political association which best corresponds to the historic disposition of individuality, the disposition on the part of individuals "to make choices for themselves and to find happiness in doing so."⁴⁶ No one, not even Mill, has evoked this disposition

45. See Michael Oakeshott, *On Human Conduct* (Oxford: Clarendon Press, 1975), pp. 256–63.

46. I have taken this quote from Oakeshott's recently published *Morality and Politics in Modern Europe: The Harvard Lectures*, ed. Shirley Letwin (New Haven and London: Yale University Press, 1993), p. 85, though Oakeshott speaks of the historic disposition to individuality in a number of places, notably, in the essays "On Being Conservative" and "The Masses in Representative Democracy," both

of individuality more subtly and beautifully than Oakeshott. And he has argued that the most satisfying liberal theory need not involve anything more than the recognition of the currency of this disposition and of the governmental arrangements appropriate to it. What is not needed are "unnecessary hypotheses" concerning human nature or "metaphysical theories of personality" —in short, just the sort of thing that Hegel's conception of the state as the realization of rational freedom explicitly invokes.⁴⁷

Oakeshott's nonmetaphysical and individualistic conception of the liberal state, like Mill's, no doubt comes closer to capturing what most people today find valuable about liberal institutions than does Hegel's grandiose vision. This suggests that it may be more useful not only for understanding liberalism now "at century's end" but also for defending it against antiliberal competitors. But we should not draw this conclusion too quickly. For Oakeshott's skeptical and nonmetaphysical liberalism, like a great many other contemporary liberalisms, remains satisfied with the fact that we simply do find personal freedom and individuality valuable without explaining why we do or why we should. This leaves it somewhat defenseless against serious challenges from those who do not necessarily share the same individualistic "disposition." It is at this point that we may find ourselves groping after the something more provided by "metaphysical" theories such as Hegel's, which seek to embed liberal freedoms and institutions in a larger and more exalted conception of the rational nature and destiny of human beings. But for the moment, liberalism in the sense Hegel, if not despised, at least found radically incomplete has triumphed.

published in *Rationalism in Politics and Other Essays*, ed. Timothy Fuller (Indianapolis: Liberty Press, 1991), and in the third essay of *On Human Conduct*.

47. Oakeshott, *Morality and Politics in Modern Europe*, pp. 83–85.

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HEGEL ON POLITICAL SENTIMENT*

von Joseph J. O'Malley, Milwaukee

The late Karl-Heinz Ilting attributed to Hegel what Ilting called a „democratic” and „republican” concept of state. In Ilting’s account, Hegel, inspired by his vision of Attic democracy and the Roman Republic, formulated the concept as early as 1795, continued to assert and develop it in his Jena and Heidelberg writings, and then expressed it most strikingly in his Berlin lectures of 1818/19, where the classical elements of the concept were joined to elements of modern

* „Political sentiment” is English for Hegel’s „*politische Gesinnung*”, which might, as some colleagues have suggested, be better rendered as „political disposition”. I’ve chosen to use „sentiment” rather than „disposition” in this paper, because that accords with T. M. Knox’s standard English version of Hegel’s *Philosophy of Right*. This paper was written as part of a larger project in the course of a Fulbright Year (1985–86) in the Federal Republic of Germany, where my academic home has been the *kulturwissenschaftliche Fakultät, Universität Bayreuth*.

thought, especially that of Rousseau, and applied to the developing 19th century nation-state. Hegel then carried the concept into his published version of his *Rechtsphilosophie*, which appeared in October 1820, where it is most evident in the opening sections, i. e. §§ 257 and 258, of Hegel's treatment of the state itself.

However, according to Ilting, under the pressure of the Karlsbad Decrees, which came as Hegel was preparing his 1818/19 version of his *Rechtsphilosophie* for publication, Hegel delayed publication of the work for a year in order to make additional revisions, and then in his published version shrouded the concept in obscure formulations, contradicted it, especially in lines added to his „Remarks” for the published version, and in fact moved in the course of §§ 257–270 to endorse an authoritarian state, in which only political office holders „know and will the universal”, while the rest of society's members are restricted to an attitude of „trust” in government and personal concern only for the „limited and finite” ends of civil society.¹

In sum, according to Ilting, Hegel's vision of an „organic”, republican-democratic state, so strikingly asserted up to 1820, disintegrated in the *Philosophy of Right* of 1820 into the dualistic picture of an authoritarian political state on one side, and a civil society of apolitical individuals on the other: „Hegel (in § 270) ascribes to the bearers of state power what he should, in accordance with his own republican approach, have demanded for all citizens of the state: political self-consciousness. . . . /In the course of his account, Hegel increasingly loses sight of his initial premise: In § 257 the state ‚exists . . . mediately in individual self-consciousness’; in § 270 the ‚mind knowing and willing itself’ of the state exists in the selfconsciousness of office-holders, while the political sentiment of the citizen and subject is reduced to the ‚trust’ that his ‚interest, both substantive and particular, is contained and preserved in another's (i. e. in the state's) interest and end’ ” (§ 268).²

I think that Ilting's thesis is mistaken, that Hegel did not shift his idea of state between §§ 257 and 270 of the *Philosophy of Right* of 1820, and that § 270 is in fact not only a demand for political self-consciousness for all citizens of the state, but a concise description of what true citizenship requires by way of knowledge. Ilting's mistake stems in particular from his misreading of §§ 260 and 270, and more broadly from his failure to recognize that Hegel's §§ 257–270 are an expanded – and at times, to be sure, obscure – restatement of the doctrine on „political sentiment” that Hegel had worked out in his earlier (i. e. 1817–1820) lectures on the *Rechtsphilosophie*. There, as we shall see, „political sentiment” is essentially knowledge, a complex social-political consciousness and self-consciousness, which animates the state as organism and effects its

¹ Hegel's Concept of the State and Marx's Early Critique, in: Z. A. Pelczynski (ed.), *The State and Civil Society. Studies in Hegel's Political Philosophy*, Cambridge 1984, pp. 83–113.

² Ibid. 111.

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universal end. That Hegel conceived of political sentiment (or „patriotism”) as essentially knowledge seems to have gone largely unnoticed by commentators.³

In what follows, I will focus first on Hegel's treatment of political sentiment in the 1817–1820 versions of his *Rechtsphilosophie*, and then in light of that review §§ 257–270 of the *Philosophy of Right* of 1820.

1. Political Sentiment in the *Rechtsphilosophie*, 1817–1820

The first text to be noted is § 123 of Hegel's Heidelberg lectures of 1817/18, as preserved in Wannenmann's *Mitschrift*.⁴ This § 123 corresponds to what would appear in the published version of 1820 as § 257, the opening § on the state as such. Indeed, the two §§ are almost identical in wording. In § 123, Hegel speaks of the „sentiment” of individual self-consciousness toward the state: „The state is the actuality of ethical spirit as universal will manifest and revealed to itself, knowing and accomplishing, having its immediate existence in custom and its mediated existence in the knowing and activity of individual self-consciousness such that this individual self-consciousness, in virtue of its sentiment — knowing the state to be its substance, its end, and the product of its activity — has its freedom in it” (145). The stress in this text on the self-conscious individual, in whose „knowing and activity” the state has its „mediated existence”, is underscored in Hegel's Remark to this § and to the one that follows it. There he states that „Spirit [of which „the state is the actuality”] has its actuality in the individual self-consciousness” (§ 123 Remark; 145); and further, „Freedom is pure activity, and this activity as freedom is self-consciousness. The idea therefore has its reality (*Realität*) in individual self-consciousness” (§ 124 Remark; 146). For Iltting, the „idea” Hegel speaks of here is his idea of a republican-democratic state of free, self-conscious individuals.⁵ If so, then one must say that the state has its reality in the self-conscious individuals who comprise it, and one must understand that the „right of the state” means the right of the individuals, when Hegel goes on to say: „It is the absolute right of the state that it be actualized through individual self-consciousness” (*Ibid.*). Hegel could just as well have said, „it is the absolute right of individual self-consciousness that it be actualized as state”. In any event, political sentiment as referred to in this text of 1817/18 is, in the first instance, knowledge: It is the

³ Commentators tend to stress either „trust” or „affectivity” as the essential aspect in Hegel's notion of political sentiment: e. g. Klaus Hartmann (129) and Merold Westphal (88–90) in their essays in the Pelczynski volume cited above.

⁴ G. W. F. Hegel, *Die Philosophie des Rechts. Die Mitschriften Wannenmann (Heidelberg 1817/18) und Homeyer (Berlin 1818/19)*. Herausgegeben, eingeleitet und erläutert von Karl-Heinz Iltting, Stuttgart 1983. I give the page numbers of texts from this volume in the body of my article, in parentheses. Translations of texts from this volume and other volumes used below, with the exception of the *Philosophy of Right* of 1820, are my own. For the *Philosophy of Right* of 1820, I use T. M. Knox's version (Oxford 1962) except where indicated.

⁵ Hegel's Concept of the State. . . , e. g. 94–95.

self-conscious individual's „knowing the state to be its substance, its end, and the product of its activity”.

A year later, in his Berlin lectures of 1818/19, recorded in Homeyer's *Mitschrift*⁶, Hegel discussed political sentiment in his § 118. There he refers to it as „sentiment of the state” (or „state sentiment”: *die Gesinnung des Staats*) and „universal sentiment” (*die allgemeine Gesinnung*). He identifies it as one of the two guarantees of the „actuality of freedom” within the „organism of the state”. The other guarantee is the „mechanism of the state” (*der Mechanismus des Staats*), about which more in a moment. The organism of the state is the state's „constitution”, and this organism is articulated inwardly in estates (*Stände*) and functions (*Geschäfte*) with their specific works and interests. Political/universal sentiment, interest, and effort develop out of individuals' pursuit of these particular works and interests: „The one-sided extremes, in which the actuality of freedom is made fast, are the *sentiment* and the *mechanism of the state*. But the authentic actuality of freedom is the *organism* of the state, namely its inner necessity, the division (*Unterscheidung*) of the state into its concrete estates and the abstract functions therein that derive from choice (*Willkür*), so that there results out of these works and interests, which are defined by the idea, the universal interest and work and so too the universal sentiment – the constitution” (269). Hegel's Remark to this § is interesting and important. On one hand, he says, the „sentiment of the citizens” (*die Gesinnung der Bürger*) alone, without the objective mechanism of institutions, cannot effect freedom: If it is, e. g. a „merely general” patriotic willing, then its „content is merely abstract”, not specified or focused by extant public arrangements; if it remains simply „in the form of sentiment” (by which I take Hegel to mean a form other than knowledge, e. g. mere affectivity), then it will be „inactive and ineffective”; and if it is active while remaining „abstract”, then it becomes „arbitrariness (the fanaticism of the French Revolution)” (*Ibid.*). But neither, on the other hand, is the mechanism alone enough: „The living actuality of the state is the unity of the two” (270). The political sentiment of selfconscious individuals is, then, an indispensable co-principle of the state-as-organism. As knowledge, the activity of spirit, it would seem to be the animating principle of the state organism.

To this point in his Remark, Hegel has referred only to the spheres of particular needs and interests, the estates and functions mentioned in the § itself. His Remark continues in this vein: „The whole must permeate everything, yet be distributed; the individuals must know that in their particular work they are active for the whole and must have this whole as their end. . . . The moments, members must have their particular freedom, and the state must be brought forth out of them. The constitution is the unity of the sentiment and the mechanism, of the inwardness and (the) externality” (*Ibid.*). Then he extends his discussion to the political institutions of the state: The inner articulation of the state-organism is in terms not only of estates, but also of a division of political „powers”. Thus, the „mechanism” of the state includes all of society's institu-

⁶ For the Homeyer material, I use the edition cited in n. 4 above.

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tions, civil and political. Political sentiment animates this mechanism and functions within it, superceding the distinction between particular and universal, or better, grasping the universal dimension of the particular, and so bringing the universal forth: „The specialization in estates and the division of powers are together essential conditions in the state's actuality, one of the guarantees of freedom. This is based on the idea of life (*Lebendigkeit*). Only thus can each moment of the functions receive its right and be treated objectively, and the subjective totality of arbitrariness (*Willkür*) is diminished. In this, the organization goes to the side other than that of the mechanism, (to the) side of understanding. This particular sphere is raised to a totality, if the function comes to be sincere and to be really carried on, so that it becomes a reflection of the idea. The whole emerges from this fulfillment of the individual" (Ibid.).

I take Hegel to be saying, in the rather cryptic latter part of this passage, that political sentiment must involve a grasp by the individual of how his particular function within society relates to the whole („becomes a reflection of the idea"), such that when exercised in accord with that sentiment („to be sincere and to be really carried on"), it yields both the fulfillment of the individual and the actuality of the whole. I do not see implied here, however, any demand that the individual participate directly in governmental functions as such. Knowledge of how these relate to one's particular function might be said to be implicitly demanded; and also knowledge of how one *could* come to participate directly in them, e. g. come to hold public office; but there is no requirement that one (all) directly do so.

At this point in his Remark to § 118, Hegel for the first time introduces the notion of „trust" (*Zutrauen*) as a feature of political sentiment. Immediately after the lines just quoted, he continues: „The certitude of this, the consciousness that others are working for the same idea, gives the individual trust. Thus is his sphere justified for him, and it holds true interest for him" (Ibid.).

So, knowledge of how one's particular function fits within the whole and contributes to it while fulfilling oneself, together with knowledge that one's fellows know likewise and act accordingly within their particular functions, justifies one's function as having a significance that is „political" in a broad sense: a consciously effected contribution to the whole, within an understood order of interrelated functions, which includes also the directly „political" ones articulated in a „division of powers". Trust in others, grounded in the knowledge that they share one's political sentiment, would extend to those who are in directly political functions as well as to those who are not, so long as one knew that they, too, were „working for the same idea". Although Hegel has been referring in this Remark explicitly to those whose functions lie in the sphere of particularity, nothing he has said restricts trust to them, or suggests that trust also in those who hold directly political functions would be anything essentially different. In neither case would trust be a substitute for knowledge that both oneself and others are „active for the whole"; in neither case would trust be mere faith in others on the part of one who lacks such knowledge.

Hegel's next lectures on the *Rechtsphilosophie*, his last before publishing the work, took place in the Winter Semester of 1819/20. Our record of them is an

anonymously authored *Nachschrift*, the text of which is not divided into Hegel's §§ and Remarks, but rather has the form of a continuous discourse, which rather closely follows the thematic order of the other versions.⁷ In this text, when he discusses political sentiment, Hegel again affirms that the institutions of family and civil society, of the sphere of particularity, are essential parts of the constitution. Moreover, he says, the members of society must recognize them to be such, or society will appear bifurcated into a governmental organization on the one hand, and a crude and formless mass of particular activities and interests on the other; the state would not be, in the consciousness of its members, an organic whole: „To the constitution there belongs first of all the organization of state power that wills the universal as such; but secondly the institutions of the particular spheres are also part of it. When people speak of the constitution, what they often mean is just the organization of active universality as such (*die Organisation, wie das Allgemeine als solches tätig ist*). But this universal is not something in itself; it sets forth and requires (*setzt voraus*) the family and civil society. So these institutions are also essential to the whole of a constitution. When people speak of the constitution, they often mean simply that there is organization somewhere above, at some higher level. If this is the case, then the particular stands over against the universal as a kind of raw mass” (227).

I take Hegel to be saying three things here: 1) If there is organization only „somewhere above”, then society is bifurcated into abstract spheres of universality and particularity; 2) if people *think* that there is organization only „somewhere above”, then their state is not, in their consciousness of it, an organic whole; and 3) if it is not in their consciousness of it an organic whole, then it is not *in fact* an organic whole: If the citizens are not conscious of themselves as active in, as well as dependent upon, an organic whole, then that whole is not actual – its end as universal will not come about. And so, immediately following the lines just quoted, Hegel continues: „This is what political sentiment essentially is, that the individuals know that their existence (*Bestehen*) depends essentially on the universal. More precisely, this patriotic sentiment means that the individual knows that his particular aims can *be* only through the universal. This is what the patriotism of the English often shows itself to be. To this extent, political sentiment is a mediating (*ein Vermittelndes*). Its content is the particular, and the universal appears as the firm binding (*das feste Band*) thanks to which the particular spheres persist (*bestehen*). But it is through this mediation that the end of the universal itself comes about” (Ibid.).⁸

⁷ G. F. W. (sic) Hegel, *Philosophie des Rechts. Die Vorlesungen von 1819/20 in einer Nachschrift*. Herausgegeben von Dieter Henrich, Frankfurt/M. 1983. Page numbers of texts from this volume are in parentheses.

⁸ This text of 1819/20 echoes Hegel's Remark to § 141 of his 1817/18 lectures: „Dies ist besonders in England der Fall, und der Patriotismus nimmt diese Wendung. Alle haben das Interesse, daß der Staat sich erhalte; denn ihr besonderes Interesse haben alle in ihren besonderen Sphären, und diese besondere Sphäre besteht nur durch den Staat. Indem sie diese besondere Sphäre in ihrem Stand erhalten, arbeiten sie für das Allgemeine, welches nur durch diese Gliederung besteht” (Ed. cited in n. 4 above, 168).

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Here too, then, political sentiment is essentially knowledge, but here specified as knowledge of one's dependence on the whole, on the universal. Hegel does not mention „trust" in this text, but we may suppose that had he wished to, he could have included it here as confidence in others, rooted in the knowledge that they, like oneself, recognize their dependence on the whole.

Nothing Hegel says about political sentiment in these passages suggests that it might be limited only to those exercising directly political functions, i. e. functions lying within that „organization of state power that wills the universal as such". Quite the contrary, he is plainly speaking about all of society's members. In fact one might say that insofar as political sentiment is that mediation of particular and universal, a willing and acting on behalf of the universal in and through a particular function, it would appear that it is to be found above all in those who do *not* fill directly political functions, where the end is „the universal as such". This would in turn mean that, for Hegel, it is more through those who do not exercise directly political functions, than through those who do, that „the end of the universal itself comes about". The real burden of effecting the end of the state lies with the ordinary citizens, who act in the sphere of particular interests and ends, but do so in a way that is informed by political sentiment.

The differences in the texts that we have seen, from 1817–1820, do not, in my view, reflect an evolution in Hegel's notion of political sentiment. Rather, these texts present altogether a complex, but quite stable and coherent concept, with the texts of 1818/19 and 1819/20 filling out what the text of 1817/18 stated so concisely as „individual self-consciousness. . . knowing the state to be its substance, its end, and the product of this activity". Thus, to know the state as one's substance is to know that one's existence and particular well-being depend on it and can *be* only within it (1819/20). To know that the state is one's end and the product of one's activity is to know that in one's particular work one is active for the whole and must have as one's end the whole, which comes out of one's own fulfillment (1818/19); or it is to know the dimension of universality present in the particularities of social life and institutions, civil as well as political, and to know that it is this knowledge itself that actualizes the universal (1819/20). Again, to know the state as one's substance is to know one's dependence on one's fellow citizens, whom one knows to share this sentiment (1818/19). Finally, the correlate of this complex knowing, the framework within which it operates, and which in fact it animates, is the mechanism of the „constitution", the totality of society's institutions, organized in a rational way, i. e. „defined by the idea" (1817/18, 1818/19). With all of this in mind, we turn now to the *Philosophy of Right* of 1820.

2. Political Sentiment in the „*Philosophy of Right*" of 1820

As noted earlier, Hegel's treatment of the state as such in this work begins with § 257; and, also as noted earlier, this § repeats almost verbatim § 123 of his lectures of 1817/18, in which great stress was given to the importance of the individual in the state. § 257 reads: „The state is the actuality of the ethical idea. It is ethical spirit as substantial will manifest and revealed to itself, thinking and

knowing itself, and accomplishing what it knows in so far as it knows it. It has its immediate existence in custom and its mediated existence in the self-consciousness, knowledge and activity of the individual, who also, in virtue of his sentiment towards the state, as the essence, end, and product of his activity, has in the state his substantive freedom" (Knox, 155; transl. modified).

This stress on the individual continues in § 258, where the state as substantial will is said to have its actuality in „the particular self-consciousness once that consciousness has been raised to consciousness of its universality”, and then in the Remark to this §, where „universally valid life” is said to be both the „starting point” and the „result” of the individual’s „particular satisfaction, activity, and mode of conduct”. What was in 1817/18 described as „the right of the state to be actualized through individual selfconsciousness” is here called the individual’s „highest duty”, viz. to be „a member of the state”, in which alone true freedom obtains (Knox. 156).

In § 260, Hegel develops these ideas further, in the familiar terms of individuals discerning the universal dimension of their particular functions and acting so as to achieve their particular fulfillment, and through that actualizing the universal. In moving to the „complete development” of their „personal individuality and its particular interests”, individuals come also to „know and will the universal” as their „substantive spirit” and the end toward which they act. In willing their particular ends they also come to will the universal, „such that the universal prevails and achieves completion only along with the particular interests and through particular knowing and willing, and the individuals do not live as private persons only for their particular interests, but rather also will in and for the universal and are active in a way that is conscious of this end”.⁹

⁹ Cf. Knox, 160–61. The German reads: „... so daß weder das Allgemeine ohne das besondere Interesse, Wissen und Wollen gelte und vollbracht werde, noch daß die Individuen bloß für das letztere als Privatpersonen leben und nicht zugleich in und für das Allgemeine wollen und eine dieses Zwecks bewußte Wirksamkeit haben” (Frankfurt/M. 1970, 407). The corresponding passage from § 116 (1818/19) reads: „... [so] daß weder das besondere Interesse, Wissen und Wollen vollbracht werde, noch die Privatpersonen bloß in diesem und für dieses leben und nicht zugleich in dem und für das Allgemeine wollen und selbstbewußte Wirksamkeit haben” (Ilting ed. cited in n. 4 above, 268). Ilting bases much of his case on this § 260, claiming that here Hegel has the individuals willing the universal „in the light of the universal” and with their activity „consciously aimed at none but the universal end” (as Knox translates it); whereas later, in § 265, Hegel will, according to Ilting, restrict individuals other than office-holders to the „finite and limited” aims of family and civil society, and then in § 270 attach universal aims exclusively to the office-holders. I do not read either of the passages above, § 260 and the corresponding § 116, as saying that the individuals’ activity is „consciously aimed at none but the universal end”. Here, as elsewhere, the individuals in question have their activity „consciously aimed at” the universal *together with and through* the particular. Knox’s translation of this part of § 260, which in my view is much too free, expresses very well Ilting’s misreading of the §. We will see shortly whether, or to what extent, § 270 appears to support Ilting’s reading of it.

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Hegel goes on to emphasize, as he had in his 1819/20 lectures, the dependence of the particular interests and functions on the universal, which is „the end immanent within them”, and he again notes the „unity of (the state’s) universal end and aim with the particular interest of individuals” (§ 261). He observes, in somewhat obscure, „speculative” fashion, that individuals come to hold their particular functions through „circumstances, . . . caprice and . . . personal choice” (§ 262), and on this point he refers his reader to § 185 and the Remark to it, in his treatment of „Civil Society”, where he had related this exercise of choice to the reality of „subjective freedom”, which is a source of the „prodigious strength and depth” of „the principle of the modern states” (§ 260). He then states again what he had said in earlier lectures: The universal is present in the spheres of particularity in the institutions of family and civil society (§ 263). Nothing that Hegel says in these §§ is startling or out of keeping with what he had been saying at least since 1817/18.

Ilting agrees that through these §§, Hegel still retains the republican-democratic intentions of his 1818/19 *Rechtsphilosophie*: „. . . § 264 of *PhR* 1820 may be summarized thus: in the state, individuals have private and public rights; their private rights they receive directly in the spheres of family and civil society; their public rights are actualized in two ways; in the social institutions which administer their particular interests, they have ‚their substantive self-consciousness’ (in so far as they see themselves represented in these institutions); to the extent that they are actively engaged in these institutions, they receive, in addition, the opportunity of ‚an occupation and activity directed on a universal end’. It is thus clear that Hegel is here merely reiterating what he had already said in § 260 of *PhR* 1820 (§ 116 of *PhR* 1818/19).”¹⁰

As said already, I do not agree with Ilting what in § 260 Hegel has individuals aiming „at none but the universal end”. Nor do I agree with him when he says, immediately following the lines just quoted, that „in § 264, by contrast, the ‚occupation and activity directed on a universal end’ is restricted to the institutions of civil society whose aim is precisely ‚limited and finite’ (§ 265).”¹¹ Hegel makes no such incredible turnabout. Actually, in § 265, he largely restates what he had said in earlier lectures: „These institutions [of family and civil society] are the components of the constitution (i. e. of rationality developed and actualized) in the sphere of particularity. They are, therefore, the firm foundation not only of the state but also of the citizens’ trust in it and sentiment towards it. They are the pillars of public freedom since in them particular freedom is realized and rational, and therefore there is in them the union of freedom and necessity” (Knox, 163.). No more than in those earlier lectures does Hegel, in §§ 264 and 265, intend to restrict the individuals’ interest to what is merely „limited and finite”.¹²

¹⁰ Hegel’s Concept of the State. . . , 102.

¹¹ Ibid.

¹² In von Griesheim’s Nachschrift of Hegel’s 1824/25 lectures, we read apropos of § 264: „. . . [the state] lives only in so far as both moments (family and civil society) are deve-

What does seem new in § 265 is that „trust” is not said to be in other individuals, but in „the state”. Yet this may be taken to mean simply that one’s trust is in the community or totality of others who, in sharing one’s political sentiment and framework of institutions, constitute (along with oneself) „the state”.

Hegel’s § 266 is very obscure. Ilting is right, I think, when he characterizes it as marking „the transition, still more implicit than explicit, from the social to the political plane”.¹³ In § 266, Hegel chooses to make this transition, which will be completed by § 270, in a highly condensed and metaphysically rendered summary of the relationship between individuals with their political sentiment, and the state as organic totality. Expressed in less metaphysical terms the § says something like the following: The self-conscious individuals („spirit”) are actual and aware of themselves in the totality of their institutions, not only insofar as these have the necessity of a rational organization, but also in the dynamism and vitality of their organic interaction. The state, as the community of self-conscious individuals objectified in the institutions that their political sentiment animates, is „aware of itself as its own object and end”, and its rational structure is thus „the shape of freedom as well”. Far from marking a departure from Hegel’s 1818/19 idea of state, this § 266 reasserts it – to be sure, in an obscure way.¹⁴

Hegel’s transition through § 266 from the social to the explicitly political plane is evidenced in § 267, where the institutional correlate of the individuals’ political sentiment is identified not as the whole of the constitution, civil and political institutions together, but as the „strictly political” institutions in their own organic interrelationship. Political sentiment, as knowledge, now (as in the earlier versions of the *Rechtsphilosophie*) is said to have explicitly political con-

veloped within it. The laws regulating these moments are the institutions of the rational order glimmering in them. But the ground and final truth of these institutions is spirit, their universal end and known objective” (Knox, 281; transl. modified. The German is in G. W. F. Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*. Edition und Kommentar in sechs Bänden von Karl-Heinz Ilting, Band 4, Stuttgart-Bad Cannstatt 1974, 638). – And apropos of § 265, Von Griesheim records Hegel as saying: „... the stability of the whole. . . is secured when universal affairs are the affairs of each member in his particular capacity. What is of the utmost importance is that the law of reason should be shot through and through by the law of particular freedom, and that my particular end should become identified with the universal end. . . . The state is actual only when its members have a feeling of their own self-hood and it is stable only when public and private ends are identical” (Knox, 281; Vorlesung. . . , Ilting ed., 639.).

¹³ Hegel’s Concept of the State. . . , 290, n. 34.

¹⁴ Yet for Ilting, in these §§ 264–266, Hegel „barely goes beyond an authoritarian state patriotism of the Lutheran stamp” (Ibid. 108). § 266, in Knox’s translation, reads: „But (spirit) is objective and actual to itself not merely as this necessity and as a realm of appearance, but also as the ideality and the heart of this necessity. Only in this way is this substantive universality aware of itself as its own object and end, with the result that the necessity appears to itself in the shape of freedom as well” (163).

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ment, the „political constitution” (§ 269), whose „various powers” will receive separate and extended treatment in the subsequent section (sc. §§ 272–320) of the *Philosophy of Right*.

Again, as in the earlier versions of the *Rechtsphilosophie*, the doctrinal development in these §§ does not reflect a change of mind on Hegel’s part as to the nature or „content” of political sentiment; he has not in the span of the two §§, 266 and 267, replaced the content provided by the institutions of family and civil society with a new content, the strictly political institutions of the political „powers”. Rather, he has shifted focus from one part of the overall content to another. One should, therefore, take Hegel’s §§ 267–269 as expressing his insistence that full political sentiment must involve knowledge not only of the institutions within which one achieves particular fulfillment, but also of the institutions of „state in the strictly political sense”. The genuine citizen is one who is informed and concerned about the nature and function of the governmental and legislative institutions of his society as well as the „private” and „civil” ones, and about the organic interconnection of them all. The political sentiment of such an individual can rightly be said to be at once a „product” and a „source” of those institutions; and thus § 268 reads: „Political sentiment, patriotism pure and simple, is assured conviction with truth as its basis. . . and a volition which has become habitual.”¹⁵ „In this sense it is a product of the institutions subsisting in the state when rationality is actually present in it, while it is through action in accordance with them that rationality operates (*ihre Betätigung erhält*)” (Knox, 163–4; transl. modified.).

The institutions Hegel refers to here include those of family and civil society (the educative sources of the political *Bildung* whose result is precisely developed political sentiment), as well as those of the „strictly political state”. We may, therefore, take Hegel’s second sentence in this text as yet another attempt on his part to express how it is that „the will and action” of individuals have the state as both their „starting point” and their „result” (§ 258 Remark), both their „essence” and their „product” (§ 257).¹⁶ In this respect, § 268 coheres perfectly

¹⁵ This is, I believe, a reference to „political virtue” (*die politische Tugend*), which in his Remark to § 257 Hegel calls „the willing of the absolute end in terms of thought” (Knox, 155), and which he defined less cryptically in his 1819/20 lectures as „not a virtue of feeling, but rather a willing of the universal end insofar as it is thought and known” (Henrich ed. cited in n. 7 above, 208). Cf. Hegel’s Remark to § 268: „Essentially, however, (patriotism) is the sentiment which, in the relationships of our daily life and under ordinary conditions, habitually recognizes that the community is one’s substantive groundwork and end” (Knox, 164). As „habitual volition”, Hegel’s „political virtue” would correspond to what Aquinas, e. g. would call the virtue of „general justice”, i. e. the constant disposition of will to serve the „common good”; see *Summa Theologiae* II–II, 58, 5–7; II–II, 58, 12, ad 1.

¹⁶ Von Griesheim records Hegel as saying in 1824/25 apropos of this §: „Patriotism is the result of the institutions of the state, but just as much is this sentiment the source, through and out of which the state has its activation (*Betätigung*) and its preservation.” Hegel, *Vorlesungen über Rechtsphilosophie* 1818–1831, Iltting ed., vol. 4, 641.

with §§ 257 and 258, and one is hard pressed to see how Hegel is in any significant respect moving away from the idea of state asserted in those earlier §§. § 268 then continues: „This sentiment is, in general, trust (which may pass over into a greater or lesser degree of educated insight), or the consciousness that my interest, both substantive and particular, is contained and preserved in another's (here, the state's) interest and end, i. e. in the other's relation to me as an individual. In this way, this very other is immediately not an other in my eyes, and in being conscious of this fact, I am free" (Knox, 164; slightly modified.).¹⁷

If Hegel was, as Ilting insists, writing with an eye to possible censorship, then this passage, when read in the context of the entire development, represents a masterful achievement on Hegel's part: It restates what he had held all along about political sentiment and its attendant trust, but it does so in a way that would arouse no suspicions of „republican" or „democratic" intentions. Hegel then goes on, as mentioned above, to insist in § 269 that political sentiment have as its „particularly defined content" the „various members" of the political „organism of the state", i. e. the „political constitution" with its rationally determined (*durch die Natur des Begriffes bestimmt*) powers, their functions and activities.

§ 270 is the culmination, a summary and transitional conclusion, of what Hegel was developing step-by-step, carefully and at times obscurely, beginning at § 257. In § 270 Hegel chose once again to express himself in metaphysical terms and a dense, complex construction. But these merely mask what is a trenchant summary of what had been developed immediately before. Indeed, reduced to its essentials, the first part of the § reads like a slightly embellished restatement of the core of § 257 and may be paraphrased thus: The state, as a necessarily self-sustaining and rationally ordered process whose end is the universal interest and within that the preservation of particular interests, has its substantiality in the self-conscious and free spiritual individual who has passed through the forming process of education (*Bildung*).¹⁸

For Ilting, the „self-conscious and free spiritual individual" referred to here means political office-holders only; but Hegel, it seems to me, is really referring to the citizen, the subject of political sentiment, in general. Interestingly, no-

¹⁷ In his lectures of 1824/25, Hegel, according to von Griesheim, put it this way: „Trust can have the form of national pride, that simple consciousness that I am a Prussian, an Englishman, that simple consciousness that I am a citizen of this state, that I am what the state is, that the state is my being. Thus trust has a quite general form, but this identity can also be a more developed insight. With that [more developed insight: J. O.] the state is not an other" (Ibid. 641–642).

¹⁸ Cf. Knox, 164–165. The German is: „Daß der Zweck des Staates das allgemeine Interesse als solches und darin als ihrer Substanz die Erhaltung der besonderen Interessen ist, ist 1. seine *abstrakte Wirklichkeit* oder Substantialität; aber sie ist 2. seine *Notwendigkeit*, als sie sich in die *Begriffsunterschiede* seiner Wirksamkeit dirimiert, welche durch jene Substantialität ebenso wirkliche feste Bestimmungen, Gewalten sind; 3. eben diese Substantialität ist aber der als *durch die Form der Bildung* hindurchgegangene, sich wissende und wollende Geist" (Frankfurt/M. 1970, 415).

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thing in Hegel's lectures on the *Rechtsphilosophie* in 1817/18, 1818/19, or 1819/20, according to the editors of these materials, corresponds exactly to this first part of § 270. In fact, the part seems to me to restate in condensed form ideas spread throughout the earlier versions, e. g. § 130 of Hegel's 1817/18 lectures.¹⁹ If this is so, then insofar as the earlier lectures referred, as we have seen, to individuals as members of the state in general, we may suppose that this first part of § 270 does likewise. Yet, Ilting was so sure of his interpretation that in his edition of Hegel's published *Philosophy of Right* (1820) and of the *Nachschriften* of Hotho (1822/23) and von Griesheim (1824/25), he put an editorial title above this § 270 that describes its contents thus: „§ 270 ‚The idea of the state, the state institutions and the holders of state power’.”²⁰

This interpretation, in my view, is untenable: in the first part of § 270 Hegel simply reexpresses in a rather obscure way what he had long held. Accordingly, what he then goes on to say in this § about „the state” amounts to a broad political paradigm: It does not refer to just the corps of political office-holders, but rather to the entire community of individuals who have genuine political sentiment; as such, furthermore, it is implicitly a strengthened restatement of what genuine citizenship involves: „The state, therefore, knows what it wills and knows it in its universality, i. e. as something thought. Hence it works and acts by reference to consciously adopted ends, known principles, and laws which are not merely implicit but are actually present to consciousness; and further, it acts with precise knowledge of existing conditions and circumstances, inasmuch as its actions have a bearing on these” (Knox, 165).²¹

Read as a statement of what citizenship in a rational political community involves – work and action that is directed toward consciously adopted ends, and that is informed by known principles and laws as well as precise knowledge of relevant conditions and circumstances – Hegel's § 270 can be seen to be utterly opposed in spirit to the repressive authoritarianism expressed in the Karlsbad Decrees, which mandated censorship of university teaching and „scientific” publication. Accordingly, if Hegel's doctrine on „political senti-

¹⁹ Ilting ed. cited in n. 4, 150.

²⁰ Hegel, *Vorlesung über Rechtsphilosophie 1818–1831*, Ilting ed., vol. 2, 708; vol. 3, 726; vol. 4, 644.

²¹ Knox agreed that Hegel had all of the citizens in mind. At the point in his translation of § 270 where Hegel mentions „the forming process of education (*Bildung*)”, Knox added a translator's note: „The history of civil society is the history of the education of this private judgment until the particular is brought back to the universal. Corporations and the working of the judicial system are educative institutions helping to produce this result. Hence the modern state which Hegel saw coming into being in his own day is substance and power, but a substance which has come to self-consciousness in its citizens. They recognize its law as their law – if they are educated enough to do so – and hence the state is not an arbitrary will or a blind necessity but the embodiment of the citizens' freedom” (p. 365). Unfortunately, neither Hotho's *Nachschrift* of 1822/23, nor von Griesheim's of 1824/25 includes comments that could help decide the issue of Hegel's meaning in § 270.

ment" as expressed in the texts we have seen is an adequate basis for judgment, then we may conclude that he did not in 1820 yield to repression: He did not surrender his philosophical principles, nor did he renounce the idea of the state that is found in his earlier lectures.

Hegel's Political Anti-Cosmopolitanism: On the Limits of Modern Political Communities

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As polities become more and more globally interdependent and enmeshed in an ever-growing number of international treaties, agreements, and conventions, new and distinctly political arguments for cosmopolitanism have become more prevalent. Whereas previous forms of cosmopolitanism have emphasized issues of distributive justice, the current revival focuses on the political institutions in which such principles ought to be embedded. The impetus for such a political cosmopolitanism is the emerging awareness of how much globalization has already transformed existing institutions and given rise to new forms of governance that in some cases replace older and ineffective ones.¹ Political cosmopolitans argue that with interconnection increasing among societies at an unprecedented pace and scale, a multitude of far-reaching problems and transnational harms have emerged that cannot be dealt with in the current institutional framework. On the other side stands a chorus of anti-cosmopolitans, from liberal nationalists to civic republicans and communitarians of various sorts. They argue that not only does the nation state still play a major role in the integration of modern global societies but also that other international forms of governance will be at best ineffective or at worst despotic, and probably both. But as important as this empirical dispute about globalization may be, the main fault lines are normative. Anti-cosmopolitans insist that the nation state is unique in its capacity to realize important political values, such as solidarity, democracy, and liberty. Cosmopolitans argue, on the contrary, that the nation state's claims to sovereignty now stand in the way of solving pressing problems of political violence and the regulation of transnational flows of information, goods, and peoples. While anti-cosmopolitans argue that solidarity and citizenship require exclusive membership and control over territory, cosmopolitans counter that just such boundaries are no longer able to secure these political goods in culturally and territorially bounded political communities. At the same time, cosmopolitans must accept that such political goods are unevenly distributed in international society.

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The debate between cosmopolitans and anti-cosmopolitans already raged in the late eighteenth century, as philosophers began to argue that the dynamism and violence of modern society required cosmopolitan political integration. At the same time, Hegel and others proposed that the state was the proper solution to problems of social fragmentation and cultural pluralism. It did so, Hegel argued, by creating the boundaries and monopoly on power within them sufficient for new administrative institutions and new forms of ethical identity and membership. These solutions have long been put into question by the critics of the nation state at least since Marx deemed it "an illusory community." In this regard, I want to argue that Hegel ought to be considered a key figure in the debate about modern political cosmopolitanism. While most philosophers in this century simply assume that the nation state is their reference point, Hegel provides specific and powerful arguments in its favor through its integrative role in modern societies characterized by such rapid pace and large scale that the dynamism of social interaction threatens communities with fragmentation and disintegration. His anti-cosmopolitanism is distinctly political rather than moral: he explicitly defends the internal and external sovereignty as a means for solving the problems of pace and scale. Only a sovereign state is bounded enough to be a unified and differentiated whole and organized enough to be a delimited individual among other individual communities in a pluralist international society.

While many philosophers have emphasized the exclusive character of membership as Hegel does in *The Philosophy of Right*, no work of modern political philosophy provides a more explicit defense of a *political* as opposed to moral anti-cosmopolitanism. Hegel clearly makes this distinction in the beginning of one section entitled "The Administration of Justice," in which he argues that Abstract Right as it is realized in modern civil society requires that all human beings be recognized as universal persons, "in which respect all are identical." This universality is cosmopolitan to the extent that in it "a human being counts as such because he is a human being, not because he is a Jew, Catholic, Protestant, German, Italian, etc." (§ 209). However, as Hegel goes on to argue, abstract right should not be generalized into an abstract political principle or set of political demands. "This consciousness, which is the aim of thought, is of infinite importance, and it is inadequate only if it adopts a fixed position—for example, as cosmopolitanism—in opposition to the concrete life of the state."² Following Richard Miller, we might say that Hegel is here distinguishing between a weaker universal "cosmopolitan respect" from the stronger "patriotic concern" for one's nearer, similarly disposed fellow citizens.³ While there is something right about Hegel's distinction between a *moral*

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cosmopolitanism directed to persons and a political demand for certain sorts of institutions, my goal is to show how *political* cosmopolitanism escapes his criticism in an age when distinctions between the inside and outside of the polity between the rights of citizens and noncitizens begin to break down. Recent political cosmopolitanism may best escape this criticism by adopting a strategy in some respects similar to Hegel's solution to the problems of the integration of modern society in *The Philosophy of Right*.

My argument has three steps. First, I look briefly at the main contemporary criticisms of a specifically political cosmopolitanism and formulate them as a dilemma between legitimacy and effectiveness at the international level. Next, I show how Hegel improves upon these criticisms by explicitly arguing for the importance of bounded communities in achieving the political goods of administration and membership. It is precisely these goods, however, that the state is no longer exclusively able to deliver as globalization extends many horizontal and vertical social relationships across borders and establishes new forms of authority and cosmopolitan politics. Finally, I propose a cosmopolitan alternative in which the administrative failures of bounded political communities and the emergence of a self-governing international civil society raise institutional problems for the realization of freedom. Any viable political solution to the problems that threaten the goods of administration and membership extends, organizes and legitimates citizenship beyond state boundaries. To the extent that it is based on an ideal of social freedom, this political alternative to a philosophy oriented to the modern state suggests a republican form of political cosmopolitanism that goes beyond the more common liberal form.

Even if I take Hegel to be making explicit the pervasive assumption of political philosophy that I want to reject, I do not here confine myself to the familiar lines of the cosmopolitan criticism of Hegel's conceptions of international relations and modern warfare. While Hegel is implacably opposed to political cosmopolitanism, I argue that he can be enlisted as an ally for this republican form in two respects. First, Hegel's defense of the modern corporation might show how cosmopolitan citizenship can successfully deal with multiple memberships and allegiances. Second, his defense of the modern state involves forms of administration, representation, and deliberation that avoid the potential problems of neofeudalism in the multi-layered and overlapping institutions and authorities that would characterize any cosmopolitan political order. However useful Hegel's solutions may have been, applying them to globalized societies requires the rather un-Hegelian and republican conception of cosmopolitan citizenship on the international level. A viable political cosmopolitanism would nonetheless have

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to adopt something like the Hegelian strategy with regard to the legitimacy of state power: but instead of the state, it would argue that international institutions are necessary not only as solutions to the global problems of social integration but also as locations for universal activities of citizenship and, hence, for the objective and self-conscious realization of freedom.

1. Effectiveness or Legitimacy? The Dilemma of Cosmopolitan Politics

Like many critics of cosmopolitanism today, Hegel's criticism does not simply reject it out of hand. Indeed, he accepts its core idea of universal personhood as a constituent part of any reflective and universal morality. As such, its universality, he says, belongs to "thought" rather than to the reality of political practices or institutions. Similarly, many contemporary anti-cosmopolitans see politics as necessarily taking place in the context of a specific community, or in Hegelian terms, as requiring the ideal of being a citizen of a free *state* with specific institutions and communal practices rather than an abstract citizen of the world.⁴ Furthermore, in most discussions, republicanism and cosmopolitanism are taken to have contrasting, if not conflicting, normative aspirations.⁵ Cosmopolitanism is "thin" and abstractly universal without the conflicts at the heart of modern politics and thus unable to articulate the basis for a "thick" citizenship in a republican political community. This commonly accepted way of dividing up the conceptual and political terrain is, however, increasingly misleading in the age of the global transformation of political authority. Cosmopolitanism is indeed opposed to those forms of political identity that are linked to another political ideal: nationalism, whether liberal or illiberal. Because being a citizen of a free state places one in a particular set of obligations and ties of solidarity, republicanism has often been considered a communitarian ideal. In light of such relationships, cosmopolitanism might appear as "thin" and "abstract" as Toulmin, Walzer, and Gutmann have argued it is.⁶ Indeed, the original context of Diogenes' assertion that "I am a citizen of the world" was just such a fallacy of composition: Diogenes was concerned to deny the validity of *any* local obligations, such as the duty to pay taxes, since the duties of the cosmopolitan citizen must only be universal ones.

As opposed to thin or abstract versions, a republican cosmopolitanism must attempt to reconcile elements of the republican and cosmopolitan sides of its ideal: It demands a *universalist* political framework within which people act as citizens by bringing to bear their *particular* interests, identities, and perspectives on common governance and problem solving. It requires new forms of cosmopolitan governance rather than new methods for aggregating or representing various interests. In

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good Hegelian fashion, it is concerned with the reality of the freedom of those whom it governs once they are regarded both as citizens of the world and citizens of a state. This reconciliation of the particular and the universal need not be any more abstract than that of any pluralist, constitutional state, and it cannot be so thick that citizenship in one location puts citizens at odds with citizenship as practiced in other institutions and associations. The issue is then how this reconciliation is to be effected, not that cosmopolitanism is a merely abstract or universal doctrine that ignores the rightful claims and goods of particular communities.

This thick and political solution to the problem of cosmopolitan identity is not without its own price. The current and obvious absence of many types of functioning governance institutions leads anti-cosmopolitans such as Dennis Thompson to argue against searching for solutions to the problems of globalization in "sites outside the framework of states."⁷ Against those who call for international democracy to solve global problems, he disputes the desirability of both centralized and decentralized solutions: Neither *cosmopolitanism* with its emphasis on strong supranational institutions, nor *civil societarism* with its emphasis on transnational associations, NGOs, and social movements will be sufficient to displace the role of the state as a location for democratic deliberation. Without clear integrative mechanisms, both strong institutions and a vibrant civil society will, according to Thompson, "only compound the deficiencies of both." Since the possibilities for a cosmopolitan rather than national democracy are thereby exhausted, cosmopolitans seem trapped on the horns of a dilemma: *either* international institutions become strong enough to be effective, and then they cannot be legitimate, *or* they can be fully democratically legitimated as informal, consensual, and pluralistic associations, and then they cannot be effective. In either case, the dilemma shows that cosmopolitanism remains a merely abstract ideal, lacking an ethical basis in the life of some community or the institutional basis of functioning institutions that all recognize as legitimate even when they act against their interests and oppose their will.

This criticism assumes that we remain comfortable with the legitimacy and effectiveness of the nation state, as well as its capacity to promote our freedom. The problem is compounded due to the uncertainties surrounding all relatively large-scale forms of modern political organization as locations for political identity and the exercise of citizenship. Even if early modern republicans could appeal to free city states, the much larger and diverse nation state has seemed to most in this century to be the proper location for such political identity. Given current social circumstances, the main difficulty is the scale of modern states and other forms of political community. They are either

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"too large" or "too small": too large to be the locus of solidarity and too small to solve most global problems effectively.⁸ They are either "too slow" or "too fast": too slow to check the flow of capital and information; too fast for accountability when it is effective. If states are unable to perform such tasks, they are also not an exclusive location for freedom.

This problem of finding a location for freedom and effective citizenship in large-scale political communities presents a challenge to both universalist and particularist attempts at reconciliation. At the most particularist side of this spectrum, liberal nationalists argue that the nation state is now the only way to realize democratic ideals.⁹ Liberal nationalists argue that no other large organization is able to command the allegiance of its citizens and count on the fairly robust and already existing ties of solidarity among them needed to sustain a shared political life amid ever-present conflicts. On the universalist side, cosmopolitan liberalism focuses on the fate and prospects of individuals and thus aims to identify principles of distributive justice "that are acceptable when each person's prospects, rather than the prospects of each society or people, are taken fairly into account."¹⁰ Both forms of liberalism repeat the cosmopolitan dilemma on their own terms: While cosmopolitan liberalism provides only general moral criterion of legitimacy, liberal nationalism argues for the state solely on the basis of its historically contingent effectiveness in forging ties of solidarity. Both leave the Hegelian opposition between the reality of political life in state and its moral inadequacies from a universal theory of justice in place.

The only remaining cosmopolitan way out this dilemma of legitimacy and effectiveness is both a political and institutional cosmopolitanism, the precise counterpart to Hegel's own account of differentiation and integration within the modern state. Hegel's own political solution to modern social integration fails precisely because of a cosmopolitan dilemma buried in his formulation of the problem. The nation state did potentially offer the sort of reconciliation of universality and particularity that Hegel demanded, but only by integrating modern societies through political sovereignty and ethical boundaries. As modern social activities and ties become spatially and temporally extended in a global civil society, what is lacking now is precisely the possibility of political organization and differentiation at a similar scale as the horizontal ties that globalization establishes. As opposed to the cosmopolitan dilemma, the anti-cosmopolitan dilemma that confronts the Hegelian solution is an inherent dialectic between the national and international levels of organization in the nation state. Hegel's political anti-cosmopolitanism cannot do justice to the deeper problems that make it impossible for the state to maintain the ethically limited form of internal and external

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sovereignty that Hegel envisioned. Indeed, the international dimension of any modern state puts it in inescapable relations of interdependence with other states and of subordination to the supervision and authority of global civil society. Under these conditions, modern freedom cannot be realized in bounded communities organized as sovereign states alone but only in an institutionally organized and democratic form of international society. This dialectic of interdependence shows that the modern state is neither a closed nor a complete community in the Hegelian sense.

2. Hegel's Defense of Bounded Modern Communities

In *Political Liberalism*, Rawls states the underlying assumption of much of modern political theory: that a bounded political community is necessary to develop a conception of justice for a well-ordered society. Any political society, he argues, is "a complete and closed social system." It is complete in that "it is self-sufficient and has a place for all the main purposes of human life," and it is closed, in that "entry into it is only by birth and exit only by death," so that we may "leave aside entirely relations with other societies and postpone all questions of justice between peoples until a conception of justice for a well-ordered society is at hand."¹¹ Even if Rawls later argues in his *Law of Peoples* that justice at the level of international society applies to peoples rather than to states, he still accepts that "there must be boundaries of some kind" in order that states may function so that peoples determine their own rules of membership.¹² The methodological fiction of a closed political society still guides the constructivist approach to developing a conception of justice for a well-ordered society.

Hegel agrees with Rawls that a modern society needs boundaries, since without them a politically organized community sustained by a shared form of ethical life would be not be possible. To be politically organized is to be a state, and to be a state is to be a closed and complete and thus bounded community (however open it is in its other forms of social organization and however socially and culturally heterogeneous its members are). Further, states must be organized so as to constitute themselves as unified and self-sufficient wholes: "the state as actual is essentially an individual state and beyond that a particular state," one of a plurality of modern states. As an individual (*ein Individuum*), it is closed and complete enough to exclude other individuals, in this case other states by analogy to the relation to other persons.¹³ It also must be large enough to defend itself from other states and yet also small and compact enough (in contrast with an empire) to be self-determining, effectively administered and to have a shared cultural basis for solidarity among citizens. State borders and sovereignty go

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hand in hand: To exercise sovereignty over a territory and thus perform its functions for its citizens and its citizens alone, the state must mark and maintain an inside and an outside, external and internal ways to maintain communal integrity.

Even as a defender of boundaries, Hegel already saw that modern societies are not organized so as to achieve closure easily. Instead they are organized around two strongly contrasting and often conflicting structural principles: one is the internal, hierarchical, and political sphere of the state, and the other the external, horizontal, and socioeconomic sphere of civil society.¹⁴ As the sphere of difference, civil society is not organized politically but on its own principle of nonintentional or "external" interdependence of the system of needs without limits (§ 195, § 199) and ceaseless horizontal expansion and dynamism and "hence has no limit" other than contingent ones introduced by external force. By contrast, the state is the sphere of unity and universality that is organized hierarchically by principles and dispositions of self-limitation (§ 260). "When the activity of civil society is unrestricted," when a modern society "is occupied internally with expanding its population and its industry" (§ 243), unlimited civil society introduces problems of the modern pace and scale of social interaction that can only be solved by placing it within the larger and regulatory context of a politically organized community and in that way check those tendencies that work against such closure and self-sufficiency.

In attempting to solve the problem of horizontal expansion without a controlling hierarchy, Hegel appeals to boundaries as the basis for social organization so often in *The Philosophy of Right* precisely because they make certain social relationships and compensating political good possible. Even in civil society, membership boundaries, for example, serve the same purpose in securing a central benefit of boundaries, the goods of membership.¹⁵ "The corporation has the right to look after its own interests within its own enclosed sphere to admit members, to protect its members against particular contingencies, and to educate others so as to make them eligible for membership" (§ 252). By relying on the closure of boundaries and of exclusive membership, corporations and the administration of justice already introduce vertical levels of hierarchy into civil society, however cooperative they may be. For Hegel, then, the dynamism of modern societies requires two types of closure for cultural and social integration: the ethical legitimacy promoted by the boundaries of exclusive membership and the effectiveness that is possible only in a hierarchically organized and administered, bounded community. Without such boundaries, neither legitimacy nor effectiveness could be politically organized in the sense of a "self-relating organism," and any political cosmopolitanism would necessarily fail to achieve both the

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effectiveness of a constitutional order that is based on the differentiation and unity of a politically organized and thus particular community. Hegel thinks that a modern society requires the *political* closure of a sovereign state, something that he takes political cosmopolitanism to reject.

In order to provide a contrast with the limits provided by the self-organization of civil society with the benefits of the distinctively political closure of the state, Hegel argues for the two classical types of sovereignty: internal and external, corresponding to forms of *inneres* and *äusseres Staatsrecht* in which the idea of freedom of a people is made actual (§ 259). This distinction would fail to hold if relations of interdependence required that they each presuppose the other: if internal sovereignty inevitably has an international dimension, for example, then modern societies do not have political closure for those aspects of political life subject to the processes of globalization. Political cosmopolitanism suggests that once we reject the distinction between internal and external sovereignty, then it is necessary to “unbundle” and thus to disaggregate many of the issues of sovereignty, bounded community, and citizenship.

Hegel certainly sees that internal and external sovereignty are both related in the completeness and closure of the whole. In rejecting the alternative of popular sovereignty, he argues that sovereignty resides in the state, not in the fiction of “the will of the people” or in the vagaries of public opinion; that is, it resides in the proper institutional and territorial organization of the state as a whole: “the peaceful state is that in which all branches of civil life subsist, while their collective and separate subsistence proceeds from the Idea of the whole” (§ 320). The control of the state is thus due to its organization, which disperses and unifies (rather than concentrates and centralizes) the traditional monopolies of power and decision making. This same collective organization that makes the state a unified individual with separate spheres with it also makes the state an independent individual in relation to other states. Since this independence is “the primary freedom and supreme dignity of a nation” (*eines Volkes*), citizens defend the state in its individuality, as a self-sufficient whole (§ 322).

As independent and complete, relations between states are governed by treaties, although these contracts are “infinitely less varied than it is in civil society, in which individuals are mutually interdependent in innumerable respects, whereas independent states are primarily wholes which can satisfy their own needs internally” (§ 332). It would certainly pose a difficulty for their internal sovereignty if states were no longer closed and self-sufficient wholes; similarly, external sovereignty would be undermined if states were not independent from international civil society and from the international society of

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states such that they incurred no obligations other than ones they imposed upon themselves. This interdependence is seen most fundamentally in the fact that states can no longer legitimately create rules for exclusive membership apart from international obligations. With the emergence of human rights for immigrants, refugees, and aliens, rights and benefits that once belonged solely to nationals extend to all residents and "are now extended to foreign populations, thereby undermining the very basis of national citizenship."¹⁶ Given the fact of increasing global interdependence, these consequences make both the internal sovereignty of states and external sovereignty in society of states inherently unstable even apart from the forms of contingency that Hegel sees as inherent in the relations among states as individual wills.

For all his notorious celebration of war and the "honor" of states, Hegel was well aware that states could not maintain their own internal integrity as individuals if they did not limit their use of force. The mutual recognition of states for each other remains "even in war," and Hegel requires that international law must at least preserve the possibility of peace, including the obligations to respect ambassadors and not to wage war "either on internal institutions and the peace of private and family life, or on private individuals" (§ 338). Such obligations are now reflected in international law as war crimes and crimes against humanity, which, after Nuremberg, "shock the conscience of the human community" and thus may be tried in criminal tribunals and courts. However much these obligations are in the enlightened self-interest of states, such restrictions entail an explicit analogy between the "peaceful" organization of the internal parts of the state and the obligations and mutual recognition governing external relations among states. As the history of European states shows, without such obligations and given the contingency of mutual recognition, the dominant strategy has been the constant preparation for war, leading to an increasing lack of peace in the internal organization of states. For example, not merely the dynamics of civil society and the preparation for war leads to the ceaseless expansion of industry and colonization, but also to the escalation in the executive powers of the state, removing many decisions from communal and legislative control. It is also true that war has proved not to be the only such problem: With illegal immigration and the trafficking of illegal goods by internationally organized crime, states are forced to escalate their internal police powers as well. In this way, a dialectic between the national and international levels of organization ensues, made increasingly more difficult to escape through the introduction of new forms of interdependence and mutual obligation, such as the exporting of harms, pollution, and other externalities across state boundaries.

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This internal/external dialectic leads to a decidedly non-Hegelian conclusion. If international agreements are as "unstable" as Hegel believes, then so is the internal sovereignty of interdependent states. In reacting to increasing interdependence and the loss of control that follows from it, modern states have attempted to reestablish control in roughly one of two ways: the loss of closure escalates either extensive or intensive power (or both, as the cases of Napoleon and Bismarck might show).¹⁷ In the first instance, the executive functions of the state are given increased power and control, leaving its supervisory agencies with greater and greater decision-making power and authority exercised from above (and with much less accountability to the legitimate interests of the political community). This is the opposite of the intended result of the purely operational control of agents. As Hegel notes, after Napoleon the solution to the problem of closure is the executive division of labor, with "the result that everything is again controlled from above and that functions are, to use the common expression, centralized." The benefits of centralization are for Hegel (as for Weber) a gain in organizational capacity, "with a high degree of facility, speed, and effectiveness in measures adopted for the universal interests of the state" (§ 290). Nonetheless, Hegel rightly seeks to limit this form of extensive power because it undermines cooperative hierarchy among lower level communal organizations. Communal organizations from below are the only available counterweight to such centralized and extensive power: "the proper strength of the state resides in its communities (*Gemeinde*)." They in fact provide the basis for legitimacy as opposed to the effectiveness of power: "Legitimate power is found only when the particular spheres are organized" (§ 290). As Weber points out, states have historically tended to replace the intensive power of communities with the extensive power of bureaucratic organizations. Second, states have also attempted to promote their own intensive power by strengthening the social bond and capacity to mobilize large-scale cooperation through nationalism, civil religion, and other means. When this social bond is strengthened as executive power is centralized, it begins to make the political community more exclusive and less responsive to the universal demands to respect all persons as such as its employment of centralized power in the interests of the state also limits the space for the exercise of subjective freedom.

This dialectic between internal and external sovereignty suggests that mechanisms for maintaining bounded political communities in conditions of interdependence are self-defeating. Even if Hegel provides us with good reasons for thinking that boundaries are ethically and politically significant for some purposes, his argument is insufficient to establish a decisive rejection of political cosmopolitanism. On the contrary, Hegel's

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own rather Grotian treatment of international law suggests that even a community of sovereign states would have to be bound by enforceable legal obligations beyond their consent in treaties; without such limitation on coercive power, external sovereignty does not serve the goal of establishing the basis for a free people. Similarly, internal sovereignty cannot be maintained without external self-limitation at the international level, so that the attempt to maintain external boundaries may move the state from a cooperative hierarchy to one organized by escalating the extensive and intensive powers that make the state more effective. The accompanying loss in legitimacy makes the state no longer the primary location for the realization of modern freedom, especially the freedom of peoples from domination. The Westphalian system that Hegel endorses preserves the plurality of states through the anti-cosmopolitan insistence that there is not, nor should there ever be, a "praetor to adjudicate between states" (§ 333). The alternative, I argue, is not to create a Leviathan-like praetor or judge (as suggested by analogy to the solution proposed for the conflicts and injuries in *Abstract Right*). Rather, it lies in showing why the facts of global interdependence do not undermine the political community based on freedom and nondomination but provides the potential basis for an effective and legitimate cosmopolitan organization of the goods of membership and administration.

3. Beyond Internal and External Sovereignty: Political Cosmopolitanism as the Realization of Freedom

Hegel primarily sees international relations as a direct consequence of the bounded character of states as individuals; thus, the instability of international relations is a necessary consequence of the contingent relations among states as closed and complete individuals. Yet it is also true that for Hegel states depend in their individuality on the recognition of other states, to such an extent that states are not yet fully realized without it: "A state without relations to other states is as little an actual individual as an individual is an actual person without relations to other persons" (§ 331). Not only do such relations of mutuality entail an unavoidable international dimension to any state qua free, complete, closed, and self-relating social system, they also lead to the self-defeating dialectic of interdependence developed in the last section precisely to the extent that the state's normative goal is the realization of freedom.

Several tendencies operating in globalized societies historically support this dialectic of interdependence. In this section, I briefly identify two such tendencies, each related to the primary goods of bounded community: the agency relations pervasive in the administration of complex societies and the

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shift of the source and legitimacy of rules of membership from the nation state to the international community.

Once the Westphalian system of formally equal sovereign states becomes less and less workable for global international society, states will be subject to increasing interdependence and new forms of nonstate authority. First, the expansion of horizontal relations of civil society has now increased to such an extent that many now speak of the "administrative failure" of the state, especially with regard to the global economy and new transnational harms like pollution and global warming.¹⁸ With this administrative failure of the state, a second failure of political authority emerges: Hegel simply could not anticipate a marked shift in political authority away from the state to civil society as politics increasingly becomes "deterritorialized" once administrative closure is no longer possible.¹⁹ As control by means of internal and external sovereignty proves inadequate, persistent regulatory failures have led states to systematically pursue policies of deregulation and denationalization of economic processes within their own territories.²⁰ The result is that states have ceded significant control to authoritative institutions outside of the framework of states, so much so that we see a reversal in relations of supervision from the national to the transnational, from state to civil society. One consequence is the decreasing importance of national citizenship for accountability.

Even given these failures, it may turn out that Hegel's insistence on politically organized community as the proper location for freedom may in a certain sense be right. The nation state is indeed historically the only form so far in which the public freedom of citizens has been historically realized in effective institutions. At the same time, the cultural resources that helped underwrite the legitimate use of force and coercion as the primary means to create and defend such territorial boundaries are now dissipating and being reconfigured. The nation state may also fail in yet another respect even more central to Hegel's account. Due to globalization, it may no longer be the primary mechanism for the constitution and authorization of political authority; it increasingly fails, in Weber's terms, to possess, exercise, and organize exclusive authority over its own territory and thus to use that authority to protect the liberty of citizens from subjection and domination due to external influences. Instead, existing forms of control resemble what Hegel calls "the administration of justice," in that they provide self-governance from within global civil society, for and by global civil society, yet without the normative constraints of broad accountability and the political equality of equal citizenship.

Hegel's own analysis of the administration of justice from within civil society suggests that these new types of hierarchical relationships in civil society have always been pervasive in

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modern economies organized around the firm as the unit of production.²¹ They are hierarchical and noncooperative because they are based on asymmetrical information: The principal delegates authority to the agent to act in his or her interests precisely because the principal does not possess the resources, information, or expertise necessary to perform the necessary tasks. Given that the principal may not be in a position to monitor and scrutinize agents even if given the opportunity, the division of epistemic labor creates pervasive asymmetries of competence and access to information. As Karl Llewellyn has already pointed out, self-government is thereby eroded to the degree that principals find that "it is repeatedly necessary to give agents powers wider than those they are normally expected to use."²²

Unlike many forms of the agent/principal relationship in economic life, the new global agents are acting in a more general regulatory capacity, regulating primarily the very political authorities for which they are agents. Moreover, the lack of any legal framework necessary to check private forms of international regulatory regimes accentuates the noncooperative, hierarchical features that the use of administrative agency by states imports from economic contexts. In these contexts, hierarchy may be defined as "the asymmetric and *incompletely defined* authority of one actor to direct the activities of another within certain bounds."²³ The challenge to political communities is precisely that such authority is "incompletely defined," since it is precisely the incompleteness of the definition of authority that creates the absence of accountability. No longer are the agents accountable to states; rather, after denationalizing many aspects of market relations, states have become accountable to the financial markets and "nationally registered statistical agencies" that formulate specific standards used to rate loans to both governments and firms. There is a tendency toward the "reversal of control" from principal to agent and from the nation state to international civil society and, thus, to large, multinational corporations.²⁴ If political community is the goal, then this reversal must be undone; it can be undone only with the minimal level of democratic control sufficient for a reversal of the direction of accountability. Simply renationalizing only recreates the initial uncertainty of authority. How can such reversal be avoided and authority made accountable? This is the practical imperative for any viable organizational form of political cosmopolitanism.

New forms of interdependence also point well beyond organizational and administrative aspects of the political life of nation states. Membership, too, is increasingly post-national. Central to any bounded political community is that its sovereignty provides the basis for it to determine its own rules of membership; justified by their own particular political goals or

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ethical norms, nations could in the past rely on territorialized identities and structures. Now with a dense set of international codes, laws, and treaties on human rights, states have in effect lost their capacity to define the rules and norms that define the scope and parameters of their own functioning. In the new order of sovereignty, "the larger system assumes the role of defining rules and principles, charging nation states with the responsibility to uphold them."²⁵ What is interesting here is not that international bodies serve to delegitimize how a state deals with foreigners or aliens, they also set out the parameters for how it may determine membership and the rights that it is obliged to protect both for its own citizens and for aliens. Rights have become increasingly a matter for residence, as many conventions and human rights regimes require eliminating any disparities between nationals and migrants and aliens, eliminating the effectiveness of exclusive political identities. Thus, even if states do now protect the rights of citizens and noncitizens, they do so because of the demands of legitimacy and the normative constraints of international rather than national laws and rules, as the former is now the location to specify and make explicit the scope and character of human rights left previously for national governments and their constitutions.

The effects of pervasive interdependence and the shift in authority and membership from the state to international civil society and political organizations provide practical arguments for a distinctively political cosmopolitanism, a form of politically organized life outside the boundaries and institutions of sovereign states. The cosmopolitan moral imperative to treat all others as human beings now extends not just to the groups that Hegel lists but now also to outsiders and aliens and thus to the relations between citizens and noncitizens. With the expansion of horizontal relationships in global civil society and the many transnational public spheres, the horizontal relation among citizens must be expanded as well. Since there are no social or cultural features of vertical or horizontal social relationships in local or national communities that cannot also now be found at the transnational level in some form or another, there is no easy way to mark the limits of modern community in terms of a shared ethical life (as Hegel recognizes with the idea of a *Weltgeist* with which he ends this section and begins the next on World History). Hegel may in this way accept a kind of convergent cultural cosmopolitanism for all his political anti-cosmopolitanism.²⁶ But *Weltgeist* emerges as the "ultimate tribunal of world history" precisely because of the instability and inherent violence of the international system that Hegel postulates, leading him to accept a kind of political quietism in the face of the failures of the nation state system that he endorses. For this reason, the central argument of *The Philosophy of Right* fails: states may give a people dignity but

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they do not realize their freedom. The bounded universals of national political communities can only be legitimated by the transsubjective categories of world history, not by social freedom. Nor can the state solve the problems of fragmentation in the face of globalization.

As the location of political life shifts in an interdependent world to sites both inside and outside of borders, any particular political issue or problem can now be located inside as well as outside of any political community, thus always simultaneously operating at global and local levels at the same time. In other words, bounded communities are no longer viable as a space for the realization of freedom as the full implications of the dialectic between the national and the international issues in higher levels of political organization. The administrative failure of the state ought not be thought of primarily as the extension of Abstract Right; some argue that this legal deficit can be filled by establishing an international court of justice to adjudicate between states as legal parties.²⁷ For political cosmopolitanism, on the contrary, international political organization is not a matter of re-creating the state and its judiciary on a larger scale but of finding the proper systematic institutional mechanisms for the rule of law and the accountability of authority among widely dispersed but interdependent groups and individuals. If it is to be useful in checking the authority of deterritorialized international civil society, it is also unavoidably going to limit the political authority of territorial states as well as checking both the extensive power of international civil society and the intensive power of states and subnational communities. Only another institutional authority can limit such authority: the authority of the politically organized community of world citizens. This appeal beyond politics to world spirit is a consequence of Hegel's failure to see the instability of the nation state system as based on the inadequacies of political closure.

4. From Bounded Community to International *Recht*: Hegelian Features of International Realizations of Freedom

I cannot here propose a fully developed alternative conception of political cosmopolitanism,²⁸ but rather will only suggest what such a conception could learn from *äusseres Staatsrecht* in Hegel's *Philosophy of Right*. The problems it has to solve are not those of classical international law governing sovereign states but the global problems that escape state boundaries: administrative failure, the uncertainties of postnational political membership, and the emergence of new and "incompletely defined" relations of authority that are the new forms of administration of justice for a self-regulating civil society. All these problems point in the direction of the need for the demo-

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cratic accountability of emerging global forms of administrative authority and to the unlinking of forms and dimensions of citizenship from membership and authority in a bounded community. Both require new formal and informal institutions, the nature of which cannot be deduced from any general moral principle of justice; rather, they derive from the new politics of democratic accountability in which citizens exercise their sovereignty inside and outside the boundaries of the state. The goal of this form of politics will be to create the conditions for world citizenship, a status that is required to provide the basis for a political counterbalance to the great inequalities that characterize global civil society and relations among sovereign states.

One of Hegel's signal contributions in *The Philosophy of Right* was to recognize that civil society is self-governing, even if it is also in need of political governance. As Hegel suggests, cooperative hierarchy and exclusive membership already emerge in civil society as institutional means to protect freedom. The same process of governance without government also explains the high degree of order in supposedly anarchic international society, where governance takes the form of "international regimes."²⁹ If there is to be any political check on such regimes, then citizens must have some means for public input and accountability. This form of politics is deterritorialized to the extent that the interests of citizens have increasingly less to do with their location in communities organized by states, but with shared problems and common interests created by a lack of influence over the process of globalization itself.³⁰ This process is currently informal and, hence, often grossly unequal, mostly involving attempts by groups in transnational civil society to contest aspects of global governance such as regime formation and compliance monitoring. Through such regimes, states are monitored by an increasing number of actors and open to an increasing influence of transnational civil society, as is the case in the human rights regime and its emerging legal institutions such as International Tribunals and possibly even an International Criminal Court. Such institutions could very well organize this kind of contestatory activity and become the means to exercise political influence over civil society and states. One example is the case of environmental crimes and responsibilities. They are increasingly made an international, rather than a national, affair where governments are as likely to cooperate with powerful economic actors in transnational civil society as with their own citizens. This form of politics requires that citizenship and sovereignty would have to be unbundled from both territoriality and bounded communities, as much as from a public sphere that is now less and less monolingual and monocultural.

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Here we return to the dilemma of political cosmopolitanism with which we began. How might such a form of politics, democratic sovereignty, and citizenship be both effectively and legitimately organized? Even as universal suffrage and representative institutions have evolved in response to some of these very circumstances of pace and scale in the nation state, these great innovations now seem too closely connected to culturally and territorially bounded forms of political community. Representative democracy, it might be argued, better embodies popular sovereignty than contestation, insofar as it is mediated through the sovereignty of the state. Once legitimated by voting and constitutional constraints, such a democracy could seek stronger regulatory control than this informal model of accountability in regimes seems to allow. The difficulty here is not just that social facts make such control infeasible and democratically undesirable. Rather, such control would make the exercise of public power an exclusive good.³¹ Because reliance on an undefined majority does not permit anyone to exercise effective control over the outcome of public processes in a global and pluralist society, electoral representation does not produce legitimacy or a sense of effective participation in governance. As Hegel argues in the nation state context, the electorate gives up upon large-scale electoral processes over which they have little chance of real influence, and majority rule becomes rule by a few (§ 311). This creates constant problems of legitimacy and promotes narrowly strategic behavior prior to and during election periods. The second objection sees accountability as better dispersed through voting, especially in elections that are regular and follow the one person-one vote rule. Such popular control is, however, only retrospective and merely negative and reactive. This means that citizens' capacity to reject leaders is stronger than their active power to shape any policy or obligations. It is hard to see what degree of control the electorate can exercise if voters are only able to influence public decisions exclusively "through retrospective judgment that representatives anticipate voters will make."³² Such representation of a majority of individuals then fails to be a feasible mechanism of control under current conditions.

In contrast to majoritarian mechanisms, Hegel has proposed different forms of representation within the state that might also be applicable to periods of deliberation when regulatory regimes are contested within international society. These mechanisms of representation are group based, with the intention of assuring that various estates or social positions are present in processes of public deliberation about legislative decision making (§ 309). At the cosmopolitan level, it would be especially important to consider a social mode of representation that would admit nonstate actors into the decision making process according to nonterritorial principles of selection,

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especially as the interests of states diverge more and more from the interests of many of their citizens. Without this kind of representation in cosmopolitan deliberation that seeks to authorize collectively the rules and modes of regulation across the boundaries of communities, international society would remain too closely tied to states and only reflect their specific set of interests, however diverse these may be. Freed from the fictions of the voluntarism of majoritarian rule, such a mode of representation seeks to join diverse groups together with their interests and collective identities intact so that that each has the reasonable expectation of being able to shape collective deliberation. Just as in Hegel's conception of parliamentary deliberation, such representation does not issue in a unified global will of the people, nor in each coming to recognize that they necessarily share a general interest that supersedes their particular group interests, but rather institutionalizes the joint activity of deliberating with others and mutually influencing them across various cultural and social boundaries.³³

Since the public sphere cannot govern on its own, contestation alone is insufficient even if it is all that is feasible in the absence of democratically organized institutions that offer opportunities for deliberation and participation. Without reasons-responsive institutions, citizens can only hope to indirectly influence decisions by means of public strategic actions; this sort of activity is typical of transnational civil society, evident in human rights and environmental NGOs and other civil society organizations. Perhaps states could, as Thompson suggests, institute the office of a "tribune" to represent the interests of noncitizens.³⁴ In order for wider accountability to be possible across the range of global administrative and membership decisions, a more strongly republican form of cosmopolitan citizenship subject to a number of further conditions must be realized. The most important is the emergence of a robust set of international institutions, especially an international judiciary with a legitimating function for states. If cosmopolitan institutions are democratic, then obligations incurred by participating in them will be constantly tested and revised by public deliberation. Such democratic activity should enhance rather than reduce national democracy. Indeed, citizen sovereignty functions in part as a principle favoring the pluralism of democratic forms of life. The very facts that make the contestation model attractive also tell against it as a model of cosmopolitan citizenship. Contestation alone tends toward a strategic orientation to such authority, leading to trade-offs among various group interests in exchange for continued cooperation and control. Thus, the emphasis on contestation in the current exercise of cosmopolitan citizenship is best viewed primarily as a corrective mechanism that can be employed when democratic authority has broken down and been reversed.

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Nondomination as an ideal requires that citizens directly participate in the terms of the constitution and operation of authority. This means that democratic accountability must have a directly deliberative component; that is, citizens must have effective deliberative input in the operational control of democratic regulatory institutions to the extent that they generate collectively binding obligations. The process of deliberation of sovereign citizens to whom institutions are responsive becomes *collectively* authoritative.

Besides such arguments from effectiveness, directly deliberative forms of cosmopolitan democracy are normatively superior in light of ideals of equal citizenship. In comparison, current arrangements are the worst of all possible worlds: they have the worst features of agency (unaccountability) and of the territorial state (uniform policies executed with little direct input). Given this combination of regulatory failures, such practices of agency are most likely to violate conditions of freedom as nondomination. The directness of deliberation allows citizens to participate in formulating cooperative conditions of agency that all can accept; it provides best for citizen sovereignty as the ability to demand an account from agents and other delegated forms of authority. Directness also permits the introduction of local variation through responsiveness to direct participation of a variety of citizens in shaping institutional rules and policies. Deliberativeness introduces features that are complementary to direct, local participation. It permits higher-order coordination and the diffusion of successful policies, as well as testing of the larger and often unintended impact of local decisions upon other locales and constituencies. More than merely legitimating and strategically influencing decisions after the fact, cosmopolitan citizens are free from the domination of agents only if they authorize and delimit hierarchy by their direct and deliberative participation in decisions that set the terms of their shared obligations.

To the extent that some set of cosmopolitan institutions become deliberative enough to make authorization possible, the disaggregated sovereignty of the nation state in large part falls upon the capacities of the cosmopolitan citizen and the existing form of organization in transnational public spheres and civil society. If this sovereignty is denationalized along with citizenship and democratic activities, then the fault lines of conflict may also change so that they no longer coalesce around national cultures and their struggles for political self-determination. This may mean that democracy is no longer tied so directly to cultural ties but rather to voluntary and chosen forms of solidarity, especially as new citizens no longer choose to assimilate to pre-political national cultures as they come to embrace democratic legal and political forms. Liberal nationalists are certainly right when they reject the kind of issue-

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based solidarities of NGOs as an insufficient form of identification. Nonetheless, such chosen forms of solidarity recognize a shared fate in the face of the breakdown of many older forms of solidarity and the dangers of new ones. Under modern global social conditions, citizenship itself was an innovative form of identity that more or less coincided with the process of nation building and was finally given universalist form in democracies. What might extend this process of inclusion in new ways?

To answer this question, we might look at the emergence of forms of solidarity in democracies that are antecedent on national identities. Here we can look to social movements (such as the Civil Rights Movement) that sought to extend national political cultures beyond their narrow and pre-political basis. Or we might consider the post-colonial movements that rejected the arbitrary authority of nondemocratic administrators. Indeed, international law widely recognizes the right to resist tyranny and slavery.³⁵ In such cases, achieving freedom from arbitrary authority requires advancing the freedom of those all who are vulnerable in a similar way.³⁶ In the case of globalization, it is vulnerability to the arbitrary authority of agents who are not accountable to citizens and to the power of those institutions that are not responsive to their reasons. Such a tyranny is overcome only by the self-creation and exercise of world citizenship by world citizens, first through contestation and challenge and then by the directly deliberative authorization of binding collective decisions. When distributed as widely as new forms of sovereignty, citizenship becomes differentiated and more complex in the face of the realities of global interaction. The universalist core of cosmopolitanism remains to the extent that citizenship rights belong to all as free and equal persons; it is extended because they are free and equal in all their particularity and vulnerabilities. Such vulnerabilities now take the form of being subject to the unconstrained judgments of incompletely defined authorities or narrow state interests. Transforming these effects of globalization is thus the task of cosmopolitan citizens whose self-governance expresses the ideal of freedom as nondomination. Such freedom is possible only if adequate institutions politically organize and maintain such freedom and are responsive to the reasons that emerge in deliberation and contestation.

5. Conclusion

Hegel's anti-cosmopolitanism is in part motivated by his diagnosis of the lack of integration of modern society. A distinctly modern form of differentiated and mediated bounded political community is able to respond to the social fragmentation of spatially and temporally extended modern societies by strengthening its internal unity and external boundaries. Those

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who today rightly worry about the demise of territorial community seek to defend the rights of communities to opt out of international civil society, especially for those groups such as indigenous peoples whose participation in current international institutions is particularly subject to disadvantages in access to influence. This is an important and legitimate concern, especially in light of the pervasive new forms of hierarchical authority from above that establish political obligations without public deliberation or contestation. If the *de jure* sovereignty and *de facto* independence of liberal nation states are now substantially weakened and replaced by new forms of political authority and hierarchies, then it would seem that without such citizenship many areas of social life that affect us most would be entirely out of the domain of democratic control. It is then with good reason that many now wonder about the possibility of a "neofeudalism" of multiple sources of authority and cross-cutting loyalties. Such a neofeudal order would be nondemocratic, to the extent that it results in differentiated sovereignty without differentiated citizenship.³⁷ Cosmopolitan citizenship establishes the latter to limit the hierarchies of the former: it establishes a voice for the processes of globalization from which there is currently no feasible exit. Rather than the putative "limits of affiliation" based on cultural identities, this lack of exit is a new limit on modern political community. Where exit is not possible or extremely costly, then effective voice in contestation and deliberation is the only alternative. Political cosmopolitanism suggests that this situation requires new institutional remedies and new opportunities for citizenship at the cosmopolitan level in order that there be collective forms of accountability and authorization. This form of cosmopolitan political organization would best fulfill the goal that Hegel sets for himself in *The Philosophy of Right*: the construction of the framework for a political community and its legitimate exercise of bounded power in order to realize the potentials for modern freedom in complex and pluralist societies.

An interesting parallel to such a political cosmopolitanism may be found in Hegel's own contrast between the modern corporation and "the miserable guild system." Corporations, or the associative side of civil society, were abolished with the emergence of modern social organization, "leaving it to individuals to look after themselves." In order that distinctly modern corporations or ethical associations would not be "an enclosed guild" or a mere interest group, Hegel demands that they be subject to the political supervision of the state. We might similarly today worry about the return to "the miserable states system," in which each state attempts to become an enclosed system and leave the worst off in international society to fend for themselves. Already Hegel saw that the need for bureaucracy in modern states meant that "citizens only have a

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limited share in the universal activity of the state; but it is necessary to provide ethical human beings with a universal activity in addition to their private ends." For the universal activity not found in the state, Hegel looked to the corporation; so long as associative membership was placed in an organized whole it could become the "knowing and thinking part of ethical life" (§ 254). Now we may say the same thing about the international institutions in which citizens engage in the universal activity of shared governance outside the borders of the nation state.

Hegel's discussion of centralization and decentralization in modern political organization provides yet another clue for thinking about the institutional structure appropriate to modern political cosmopolitanism. Hegel sees feudal and modern political organization as committing complementary errors. While the problem of the modern state is that power has been organized from above, communities organized from below "gained too great a degree of self-sufficiency, when they became states within the state and behaved in an obdurate manner like independently established bodies" (§ 290). This is very much the problem of a neofeudal order of the current system of states in which states subvert universal interests and undermine the legitimate interests of local communities for environmental and economic integrity. A political cosmopolitan order from above might become similarly Napoleonic and thus lack the communal basis for the exercise of legitimate power, however much its principles are based on widely recognized universal human rights. Indeed, such a lack of legitimate power plagues many current international organizations, in part because of the lack of a just distribution of basic political rights and effective opportunities for influence.

This organizational problem does not deny the need for the supervision of states and self-governing civil society by international judicial or parliamentary bodies. Nonetheless, the great advantage of the current cosmopolitan political order is that there are already very many fully developed organizations "from below" in modern states, international regimes and transnational civil society, all of which constitute what Hegel calls "circles in which particular and universal interests come together" (§ 290). In a multileveled and federal system of such institutions in a cosmopolitan democracy, the universal activity of citizenship is distributed across organizations and forms of integration. Cosmopolitan citizenship will thus take place in many different locations and in different ways within them: in national and international civil society and in contestation in national and international public spheres, in the limited share of universal activity still possible in nation states, and in citizens' shared public deliberation across boundaries and access to influence over the governing cosmopolitan institutions.

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This not only permits different scales of organization but also a division of institutional and deliberative labor that is unavoidable in international society. Political cosmopolitanism then argues that such a dispersal of functions permits the international community to distribute important rights of exit and voice more fairly than in the current system for organizing legitimacy and effectiveness.

Such a form of political cosmopolitanism at least potentially solves the dilemma posed in the beginning, in that its effectiveness is based on collectively authorized and legitimate power responsive to a variety of reasons. Of course, only with the emergence of genuinely political international institutions that are accountable to world citizens would the dilemma actually be solved. My purpose here is only to show that political cosmopolitanism is not trapped between two undesirable alternatives and thus to answer some of the strongest objections to its very possibility posed by Hegel and others. Such a form of cosmopolitanism remains an incomplete project and even more so if we add distinctly democratic requirements. The current capacity of human rights regimes to define the rules and limits of state legality as well as the increasing expansion of global social interaction in civil society and public spheres beyond elites provides some reason for optimism. Recent protests and demands for accountability of international institutions and agencies have had some success in bringing about internal changes in previously closed institutions, as evidenced in debt relief and some increasing openness even in economic institutions such as the World Bank and the WTO to political influence and participation that is not cast in the terms of standard economic models. At the same time, the continued exclusion from effective participation and the continued exportation of costs and externalities to the worst off members of international society is strong evidence to the contrary that access to political influence over the social and economic processes unleashed by globalization is still difficult to achieve in the absence of something like a democratic rule of law and social, cultural, and civil rights for many governing transnational and international settings and organizations. Such previously excluded members would participate only if they have motivation to cooperate: not only must international political organizations equally and fairly distribute the goods of membership and administration to all, they must provide clear channels of influence and transparent mechanisms of accountability that make for political equality and the equal worth of political freedom across the great asymmetries that characterize the current distribution of power in international society.

The emergence of such a democratic politics and rule of law at the international level must be a two-sided process, from above and below, if the political goods of membership and

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administration are to be subjected to the normative constraints of democracy and distributive fairness. Given the current limits of modern political community, political integration requires not only a robust democratic state whose international orientation is based on the acceptance of its own limited *de jure* sovereignty but also a differentiated, mediated, and politically organized world community in which cosmopolitan citizens together exercise their own and maintain each other's freedom in many different acts and sites of contestation and deliberation.³⁸

Notes

¹ David Held distinguishes three main positions on globalization: hyperglobalists, transformationalists, and skeptics. Hyperglobalists see globalization as bringing about denationalization and the creation of a single world market that will eventually supplant traditional nation states as the primary unit of a world society. Skeptics deny this view, arguing for the enduring power of the nation state. Transformationalists see current globalization as unprecedented, leading to a basic transformation of existing institutions and the emergence of new ones as well. The nation state may retain its supremacy over its own territory but will be "juxtaposed, to varying degrees with the expanding jurisdiction of institutions of international governance and the constraints of, as well as the obligations derived from, international law." See David Held, Anthony McGrew, David Goldblatt, and Jonathan Perraton, *Global Transformations* (Stanford: Stanford University Press, 1999), 8 ff. My analysis here requires the empirical adequacy of the transformationalist thesis, supported in great detail by Held et al. in the various phenomena that underlie globalization from trade to immigration to culture and information technology. Any defense of Hegel's conception of internal and external sovereignty would ultimately accept the skeptical thesis, given that Hegel accepts the completeness of the state and the possibility of its effective closure despite strong tendencies to the contrary.

² G. W. F. Hegel, *Elements of the Philosophy of Right* (Cambridge: Cambridge University Press, 1991), § 209. Hereafter all citations in text by the common section number.

³ John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), 36. The wider issue is Rawls's claim to justify his commitment to the state as a territorial political community and to "the law of peoples" because of putative "limits of affiliation." This objection aims at the republican rather than the liberal component of cosmopolitan democracy; a brief reply is that these limits of solidarity are surely plastic in pluralistic polities like the contemporary United States. There is no empirical feature of the associative bond among citizens in a large and pluralistic nation state such as the United States that is not also present in transnational social interaction or institutional settings. Richard Miller thinks that certain characteristics of communal social relations justify the priority of patriotic concern universally; specifically, he appeals to "unchosen" and "especially intense interdependence and mutual subordination." However, it is empirically false that such relations are unique to bounded political communities. See Richard Miller, "Cosmopolitan

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Respect and Patriotic Concern," *Philosophy and Public Affairs* 27 (1998): 202–224. I see little hope that this argumentative strategy will work given the fact of pervasive global interdependence at many different levels of social interaction.

⁴ See Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1997) also Phillip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997); for its extension and application to cosmopolitan contexts, see James Bohman, "Cosmopolitan Republicanism," *The Monist* 84 (2001): 3–22.

⁵ For such democratically motivated criticisms, see Michael Sandel, *Democracy's Discontent* (Cambridge: Harvard University Press, 1996) and David Miller, *On Nationality* (Oxford: Oxford University Press, 1995), 64–65.

⁶ Amy Gutmann, "The Challenge of Multiculturalism in Political Ethics," *Philosophy and Public Affairs* 22 (1993): 171–206; Michael Walzer, *Interpretation and Social Criticism* (Cambridge: Harvard University Press, 1987) and Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (Chicago: University of Chicago Press, 1990).

⁷ Dennis Thompson, "Democratic Theory and Global Society," *The Journal of Political Philosophy* 7 (1999): 113.

⁸ Daniel Bell, "The World and the United States in 2013," *Daedalus* 116 (1987): 1–31.

⁹ Yael Tamir, *Liberal Nationalism* (Princeton: Princeton University Press, 1993), 83–84.

¹⁰ Charles Beitz, "Social and Cosmopolitan Liberalism," *International Affairs* 75 (1999): 519.

¹¹ Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 41. For a criticism of this assumption with regard to the Kantian duties of hospitality in global immigration, see Seyla Benhabib, "Citizens, Residents and Aliens in a Changing World: Political Membership in the Global Era," *Social Research* 66 (1999): 726 ff.

¹² Rawls, *The Law of Peoples*, 39.

¹³ Adriaan Peperzak, "Hegel Contra Hegel in *The Philosophy of Right*: The Contradictions of International Politics," *Journal of the History of Philosophy* 32 (1994): 247.

¹⁴ See Lawrence Friedman, *The Horizontal Society* (New Haven: Yale University Press, 1999) for an analysis of the expansion of horizontal social relationships as an essential feature of modernity.

¹⁵ Michael Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge: Cambridge University Press, 1994), 205 ff.

¹⁶ Yasemin Soysal, *The Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press, 1994), 137.

¹⁷ On the distinction between extensive and intensive power, see Michael Mann, *The Sources of Social Power*, vol. 1 (Cambridge: Cambridge University Press, 1986), 5 f. Extensive power "refers to the ability to organize large numbers of people over far-flung territories in order to engage in minimally stable cooperation." By contrast, intensive power "refers to the ability to organize tightly and command a high level of mobilization or commitment from the participants, whether the area and numbers covered is great or small" (5).

¹⁸ Jürgen Habermas, *Die Postnationale Konstellation* (Frankfurt:

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Suhrkamp Verlag, 1999), 141.

¹⁹ Saskia Sassen, *Losing Control: Sovereignty in the Age of Globalization* (New York: Columbia University Press, 1996).

²⁰ Sassen, *Losing Control*, 15–16.

²¹ Kenneth Arrow, "The Economics of Agency," in *Principals and Agents*, ed. J. Pratt and R. Zeckhauser (Cambridge: Harvard Business School Press, 1985), 37.

²² Karl Llewellyn, "Agency," in *Encyclopedia of the Social Sciences*, Volume 1 (New York: MacMillan, 1930), 483.

²³ Gary Miller, *Managerial Dilemmas: The Political Economy of Hierarchy* (Cambridge: Cambridge University Press, 1992), 16.

²⁴ Llewellyn, "Agency," 484; Harrison White, "Agency as Control," in *Principal and Agents*, ed. J. Pratt and R. Zeckhauser (Cambridge: Harvard Business School Press, 1985), 205.

²⁵ See Soysal, *The Limits of Citizenship*, 144.

²⁶ It may be useful to distinguish more dimensions of cosmopolitanism than merely the moral and political ones explicitly present in Hegel and most contemporary debates. See Pauline Kleingeld, "Six Varieties of Cosmopolitanism in Late Eighteenth Century Germany," *Journal of the History of Ideas* 60 (1999): 505–524. Certainly today hyperglobalists are usually economic and cultural cosmopolitans, while not necessarily moral, political, or legal cosmopolitans. Kleingeld also adds the Romantic cosmopolitanism of Schlegel and Novalis based on an affective form of global community quite opposed to the economic or commercial globalization of the market.

²⁷ Peperzak proposes that for the sake of consistency Hegel ought to repeat his earlier solution to the problem of abstract right on the international level; see Peperzak, "Hegel Contra Hegel in *The Philosophy of Right*," 249. Such a repetition of state structures would lead not only to moral conflicts but also to the need to rank cosmopolitan obligations as intrinsically superior to national and local ones. Such a hierarchy thus leads to a moral rather than a political cosmopolitanism.

²⁸ This is the goal of my book, *Democracy Outside of Borders* (forthcoming).

²⁹ Regimes are "sets of implicit and explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area in international relations." These include agreements as diverse as human rights, commercial whaling, or arms reduction. See Stephen Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," in *International Regimes*, ed. S. Krasner (Ithaca, NY: Cornell University Press, 1983), 2.

³⁰ On the role of regimes as agreements on rules and systems of monitoring necessary to solve specific problems, see James Bohman, "International Regimes and Democratic Governance," *International Affairs* 75 (1999): 499–514.

³¹ For a view of democracy that endorses this consequence, see Thomas Christiano, *The Rule of the Many* (Boulder: Westview Press, 1996).

³² Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997), 179.

³³ See Andrew Buchwalter, "Political Pluralism in Hegel and Rawls," in *Pragmatism and Critical Theory*, ed. J. Bohman and W. Reh (Cambridge: MIT Press, forthcoming). Buchwalter emphasizes that

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Hegel understands deliberation as *Mitwirkung*, or the mutual influence of diverse communities in decisions that affect them, rather than as the formation of some unified will. Against Buchwalter's expansive interpretation, Hegel clearly limits the decision-making and authorizing role of this body in *The Philosophy of Right* (309), even as it is a location for the expression of legitimate interests and for mutual influence and consultation.

³⁴ Thompson, "Democratic Theory and Global Society," 122.

³⁵ On this right as a basic human right derived from rights of self-determination, see Fernando Teson, *A Philosophy of International Law* (Boulder: Westview Press, 1998), 6.

³⁶ Pettit, *Republicanism*, 144–145. Unlike civic republicanism, Pettit's form of republicanism does not rule out extending the ideal outside the nation state, arguing that a republic has the obligation to "improve the prospects for nondomination on the international front" (151). Furthermore, he argues, a republican defense policy and the interests of a republican state encourages "different layers of multinational cooperation and institutionalization," even possibly an "expatriate domestic sovereignty" in cases where international agencies "would do better in the promotion of freedom as non-domination among citizens of that state than the state itself" (152–153). While still formulated from the perspective of the defense of nation state, this principle justifies cosmopolitan political institutions and the rejection of state sovereignty when they are necessary to realize freedom.

³⁷ Hedley Bull, *The Anarchical Society* (London: McMillan, 1977), 254

³⁸ I would like to thank Chris Latiolais for his comments; they helped me see several issues more clearly. I would also like to thank Robert Bernasconi, Jay Bernstein, and Robert Pippin for their comments on feasibility and on the perspective of those currently excluded from international politics. I would also like to thank Simon Lumsden for his discussion of the central place of demands for democratic accountability at recent WTO and World Bank protests.

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